

**PUBLIC LAW BOARD NO. 7156**

**PARTIES**     )  
          **TO**       )  
**DISPUTE**    )  
                  **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**  
                  **UNION PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM**

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier improperly suspended work for seven (7) hours and twenty (20) minutes of the employees assigned to Tie Gang 9167 and Support Gangs 9272, 9197, 9996 and 9177 on June 2, 2004 (System File MW-04-115/1403667 MPR).
2. The Agreement was violated when the Carrier improperly suspended work for seven (7) hours and twenty (20) minutes of the employees assigned to Tie Gang 9166 and Support Gangs 3837, 9271, 9135, 9176 and 9196 on June 2, 2004 (System File MW-04-116/1403668 MPR).
3. The Agreement was violated when the Carrier improperly suspended work for seven (7) hours and twenty (20) minutes of the employees assigned to Undercutter Gang 9160 and Support Gangs 9118 and 9102 on June 2, 2004 (System File MW-04-122/1407571 MPR).
4. As a consequence of the violation referred to in Part (1) above, all employees assigned to Tie Gang 9167 and Support Gangs 9272, 9197, 9996 and 9177 on June 2, 2004 shall now each be compensated for seven (7) hours and twenty (20) minutes at their respective straight time rate of pay.
5. As a consequence of the violation referred to in Part (2) above, all employees assigned to Tie Gang 9166 and Support Gangs 3837, 9271, 9135, 9176 and 9196 on June 2, 2004 shall now each be compensated for seven (7) hours and twenty (20) minutes at their respective straight time rate of pay.
6. As a consequence of the violation referred to in Part (3) above, all employees assigned to Undercutter Gang 9160 and Support Gangs 9118 and 9102 on June 2, 2004 shall now each be compensated for seven (7) hours and twenty (20) minutes at their respective straight time rate of pay.

## **OPINION OF BOARD**

On June 2, 2004, the gangs identified in the statement of claim were involved in an extensive tie renewal project and related work in the vicinity of Fort Worth, Texas. The gangs were working compressed work schedules of eight consecutive 11 hour days followed by 7 rest days.

Claimants from those gangs reported to work at 2:00 p.m. that date. After working for three hours and 40 minutes, the Carrier suspended work for the day due to thunderstorms in the area.

According to Manager C. Martinez:

... [O]n June 2, 2004 there were severe thunderstorms with lightning, strong wind with hail warnings. These storms were picked up through Doppler radar and through the local weather stations along with the supervisors of the gang keeping watch and talking to the Spring Dispatch center, who also track storms for transportation safety purposes. It was due to these actual facts the gangs were sent home. ... The storms moved in at 5:30 PM ... [T]he supervisors made the decision to call the work day off for the safety of the employee's. This decision was indeed made after waiting a couple of hours and monitoring the storm situation. ...

The Organization disputes the factual assertions concerning the weather conditions, even to the extent of stating that the sun was shining. According to the Organiza-

tion, the Carrier called off work that day because of high train traffic.

Claimants were compensated for actual time worked. These claims seek the balance of pay for the day.

Rule 10 provides, in pertinent part:

### **FORCE REDUCTION**

Rule 10. ...

\* \* \*

(b) Not less than five (5) working days' advance notice will be given before regularly established positions are abolished. ...

(c) ...

(2) Advance notice requirements to employees before temporarily abolishing positions or making temporary force reductions are hereby modified to eliminate any requirement for such notice under emergency conditions, such as flood, snow storm, hurricane, tornado, earthquake, fire, or a labor dispute .... provided that such conditions result in suspension of the Carrier's operations in whole or in part. ... It is understood and agreed that such temporary force reductions will be confined solely to those work locations directly affected by any suspension of operations. ....

Rule 10(c)(2) therefore allows the Carrier to suspend operations and

send employees home for dangerous weather conditions.

The Organization has the burden to demonstrate all the necessary elements of its claim. Stripped to its essence, the Organization asserts the weather was not a safety concern on the date in dispute. The Carrier asserts the opposite. The record supports both positions. But the burden is on the Organization. A record in factual dispute to this extent does not allow for a conclusion that the Organization has carried its burden.

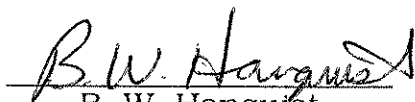
Based on the above, the claim must be denied.

**AWARD**

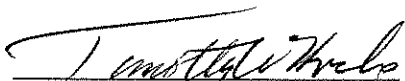
Claims denied.



Edwin H. Benn  
Neutral Member



B. W. Hanquist  
Carrier Member



T. W. Kreke  
Organization Member

Dec 17, 2008

Chicago, Illinois

Dated: 12-17-08