

PUBLIC LAW BOARD NO. 1760

Award No. 76

Case No. 76

Docket No. MW-FTW-85-43

Parties Brotherhood of Maintenance of Way Employes
to and
Dispute Norfolk and Western Railway Company
 (Former Wabash)

Statement

of Claim: Claim on behalf of Machine Operators on the T-8 Tie Force
for 5.5 hours at the applicable straight time rate on
October 24, 1985.

Findings: The Board has jurisdiction of this case.

The claims in this case are a variation of those made in our
Award No. 75 the findings of which by reference are incorporated
herein. Here, the employees in Tie Gang T-8 left their camp cars and
were transported to the work site. It commenced raining shortly after
they started to work on October 24, 1986.

The Organization asserts:

"These employees requested to work on that said date as
Machine Operators in their class and service and the Carrier
failed to allow the Machine Operators to work in accordance
with their working agreement..."

The Carrier states:

"Employees working in the gang complained to Supervisor T.
King, Assistant Manager System Gang, about having to work in
the rain. Mr. King told gang members that if they ceased
work their pay would be stopped also... The gang refused to
continue working. The Employees were then transported to the
camp cars where their compensable time ended."

All members of the gang, including monthly rated Machine
Operators, were paid for two and one-half hours covering the time they
started work at the job site until they arrived back at the camp cars.

Rule 23 - "Hours Paid For" in part, reads:

"... Time lost due to inclement weather shall not be
regarded as a violation of this rule.


When less than eight (8) hours are worked for convenience of
employees,..., or when due to inclement weather,
interruptions occur to regular establish work periods,


preventing eight (8) hours work, only actual hours worked, or held for duty will be paid for...." (underscoring supplied)

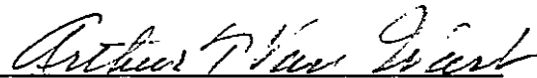
If, as contended by Carrier, the Operators refused to work, then Rule 23 prescribed precisely what they are to be paid. On the other hand, if as contended by the Organization that they wanted to work but the Carrier suspended the work due to inclement weather then that represented a managerial decision contemplated by Rule 23 and they were paid precisely as prescribed by Rule 23. The Board will not second guess the Carrier. 1850 is clearly distinguishable to this case.

The case appears similar to Third Division Awards 12689 and 17193 which denied similar claims under similar circumstances.

Award: Claims denied.


Sol Hammons, Jr., Employee Member


J. Abbateello, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

May 24, 1991
Issued ~~June 9, 1988~~.