

PUBLIC LAW BOARD NO. 1838

Award No. 37

Carrier File MW-WS-78-1

Parties Brotherhood of Maintenance of Way Employees
to and

Dispute Norfolk and Western Railway Company

Statement

of Claim: Twenty three (23) employees of R-4 Rail Gang are claiming four (4) hours' pay at pro-rata rate on October 26, 1977, citing violation of Rule 17 of the Current Agreement, account reporting for work and not used.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 1, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

The General Chairman instituted the instant claim by letter of December 13, 1977, reading:

"On Wednesday, October 26, 1977, the men listed in attachment 'A' had reported for work and were already loaded on the bus, ready to leave for work. They were then told there would not be any work that day.

We are requesting four (4) hours pay at the pro-rata rate for these men, for the date involved.

We are citing Rule 17 as well as any other rule of the current M/W Agreement which might pertain to this claim."

Carrier responded thereto, in pertinent part, as follows:

"Our investigation of this matter reveals that Claimants were advised prior to start of work on October 26, 1977 that they would not be able to work that day because of heavy rain. Inasmuch as Claimants performed no service on this date, they are not entitled to the additional unearned compensation that you have requested on their behalf. We can find nothing in the rules of the current working agreement which could be regarded as entitling Claimants to such pay,

nor have you cited any rule. Rule 17, mentioned by you, applies only to the emergency force reductions due to such conditions as floods, snow storms, hurricanes, tornadoes, earthquakes, fires, etc., and has no application to the matter now under consideration.

We find that there has been no violation of Rule 17, nor any other rule of the current working agreement and this claim is, therefore, declined."

Claimants, members of the R-4 rail gang, were advised at 6:45 AM, on October 26, 1977, that because of heavy rains there would be no work that day. The gang's reporting time is 7:00 AM.

Rule 17 - Emergency Force Reduction - is clearly not applicable here. Claimant employees clearly were not furloughed. Rather, they were simply "laid-in" because of the inclement weather.

It was not denied that Maintenance of Way Extra Gangs when laid-in because of inclement weather are paid only for the actual time that they are on duty as contemplated by Rule 38(B) - Hours Paid For - in pertinent part, reading:

"...or when due to inclement weather interruptions occur to regular established work preventing eight hours work, or actual hours worked or held on duty will be paid for except as provided in these rules...." (Underscoring supplied)

The Board has no authority to apply its sense of equity here for such is a matter reposing within the authority of the parties to the agreement establishing this Board. We cannot supply rules where they do not exist. Thus, when the facts of the situation are applied to the rule cited it warrants a denial award.

Award: Claim denied.



A. D. Arnett, Employee Member



G. C. Edwards, Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Salem, New Jersey, September 30, 1980.