

PUBLIC LAW BOARD NO. 1850

Award No. 15

Docket No. 31

BMWE File TOL-1613

Carrier File 2-MG-1552

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute The Baltimore and Ohio Railroad Company

Statement of Claim Claim filed on behalf of Trackman Cardell Bowling and Vernus Bowling for one and one-half (1 1/2) hours' pay on account of only being allowed six and one-half (6 1/2) hours' pay on January 16, 1976 when they were on duty eight (8) hours on said date.

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 October 27, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant Trackman, on January 16, 1976, reported with their truck to Syanid behind the Fisher Body Plant, their assigned work location for that day, to work with other Maintenance of Way Forces.

The Employees assert that Claimants and their Foreman remained in their truck because of the heavy rain until about 10:00 AM, when it let up after which Claimants

went to work. They were paid for only 6 1/2 hours.

Also at this location were a Welder and a Welder Helper who had previously been working at another location and who left same in a separate truck and joined Claimants. However, when the Welders arrived on the job site with Claimants they were unable to work because the work to be performed by them had to be done in conjunction with Claimant Trackmen. Hence, such could not be performed until Claimants got off their truck. The Welders were paid for eight (8) hours.

The parties are in agreement that Claimants were sitting in their truck for 1 1/2 hours on the morning of January 16, 1976 before they went to work.

The provision of the Agreement here involved, - Rule 16 - "GUARANTEE" - reads:

"(b) Trackmen and extra gang men required to report at usual starting time and place for the days work will be allowed a minimum of four (4) hours when conditions prevent work being performed. If held on duty over four (4) hours, they will be paid for actual time held. When laid off on account of inclement weather after the beginning of the days work and again required to work for service during their regular tour of duty, they will be paid under the Call Rule.

(c). When less than eight (8) hours of work for the convenience of employees only actual hours worked or held on duty will be paid for."

The Employees assert that because the Welders had been paid eight hours and that Claimants were only paid for six and one-half hours that they were discriminated against, that Claimants are entitled to eight hours pay under Rule 16, the same as was paid to the Welders.

The record reflects that it was not denied that the Welder and the Welder Helper had already been working and had left another location in a separate truck to join Claimants and that said Welders were unable to perform any work until Claimant Trackmen, who were sitting in the truck and had refused to go out in the "light" rain, had gone to work. Said Welders were, in effect, ready, willing and able to work. Therefore they were paid. Claimants, on the other hand, had in effect, refused to work for about one and one-half hours.

The facts herein appear similar, if not identical, to those in Case No. 11 of PLB No. 1210, on this property. There, a claim was made for two hours for the Trackmen involved, and six hours each for those Claimants other than Trackmen account not working because of inclement weather. There, Machine Operators refused to work due to the weather and consequently, the Trackmen could not work because, as pointed out in Award 11, "without the machines this unit is unable to perform the installation

of ties as scheduled". It was also held therein that:

"The inference is clear that if the Machine Operators had been willing to work the whole unit would have been working, weather notwithstanding. The record also shows that the Assistant Division Engineer requested that the machines be started and the Operators refused to do so."

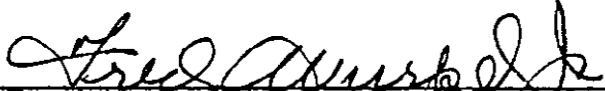
The Board in its Award No. 11 sustained the claim of the Trackmen but denied the claim of the Operators.


This Board finds in the instant case that on the facts of this record Claimant Trackmen refused to work, after being so requested by their Foreman, and that the Welder and Welder Helper were totally dependent on the performance of their work after the Trackmen had commenced working. Thus, the only reason Claimants failed to receive eight (8) hours compensation was the result of their voluntary refusal to commence work at the work site. Foreman Mullen's opinion that the conditions existing on January 16, 1976 did not prevent the necessary track work from being performed was not previously disputed. Hence, as Third Division Award No. 16746 (Friedman) held:


"....Claimants have not justified their refusal to perform the assigned work. Under the circumstances Carrier had no obligation to assign the men elsewhere. Their failure to work was the result of a voluntary choice and the loss of time which resulted therefrom requires no recompense under any rule in the Agreement."

Consequently, the instant claim will be denied.

Award Claim denied.


Fred Wurpel, Jr., Employee Member


W. C. Comiskey, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Salem, New Jersey, April 15, 1980.