

PUBLIC LAW BOARD NO. 1850

Award No. 8

Docket No. 16

Org. File No. ERRG-1700

Carrier File No. 2-MG-1471

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Baltimore & Ohio Railroad

Statement of Claim: "Claim filed on behalf of 28 members of the Eastern Region Rail Gang listed below for three and one-half hours each at their respective rates account Supervisor Hogan sending them back to their headquarters on September 9, (16) 1975 and only allowing them one-half hour pay for the day:

<u>Claimant</u>	<u>I.D.No.</u>	<u>Claimant</u>	<u>I.D.No.</u>
Sirbaugh, C.	1205605	Sweeten, J.G.	1514740
McKenzie, R.D.	1514045	Dyche, C.J.	1514971
Miller, R.E.	1514831	Mayfield, T.W.	1514868
Linger, J.R.	1106786	Lewis, R.L.	1514043
Arthur, L.V., Jr.	1512350	Stalnaker, R.G.	1514623
Toth, N.J.	1513687	Atkinson, H.D.	1514829
Price, D.F.	1512468	Wilson, M.S.	1513676
Durst, G.L.	1513558	Ross, M.K.	1511972
Morgan, R.T.	1513533	Drell, R.M.	1513622
James, C.E.	1512147	Gloyd, D.S.	1500267
Smith, C.H., Jr.	1513863	Caruthers, R.D.	1512193
Holcomb, B.R.	1510401	Walker, S.L.	1513633
Kean, D.H.	1515210	Ryan, F.M.	1509901
Jones, M.L.	1514619	Beckner, B.C.	1507037"

Findings: The Board finds, after hearing upon the whole record and all evidence, 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 hearings held.

These 28 Claimants were members of a 44 member Eastern Region Rail Gang,

headquartered in camp cars located at Burnsville, West Virginia. On September 16, 1975, the Rail Gang members boarded their buses and travelled to their work site some 10 miles away. It was raining upon arrival there. Supervisor Hogan, believing the inclement weather would not deter them from work, directed the gang to lay rail. Sixteen (16) members of the Rail Gang left the bus and went to work. Twenty-eight (28), the Claimants herein, said it was raining too hard to work. As a result, these Claimants were driven back to their camp cars and were paid for the actual time on duty, travelling from their headquarters to the work site, one-half hour pro rata.

Claimants allege they were entitled to four (4) hours pro rata under Rule 16(b) which, in pertinent part, provides:

"(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..."

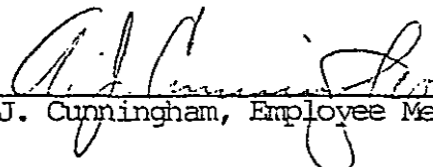
Paragraph (C) of Rule 16 provides:

"(c) Less than eight (8) hours are worked for the convenience of employees, only hours actually worked or held on duty will be paid for."

Absent a failure on the Claimant's part to demonstrate that "conditions prevented work being performed" and the fact that forty (40) percent of the Rail Gang did follow Supervisor Hogan's direction to lay rail, the Board is impelled to conclude that Claimant's voluntary choice to refuse work on September 16, 1975, thereby removed them from the monetary protection of Rule 16(b) and placed them under the Provisions of Rule 16(c). Consequently, Claimants were properly paid the actual time thereunder.

The Board, in the circumstances herein, will deny these claims.

Award: Claims denied.


A. J. Cunningham, Employee Member


L. W. Burks, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member