

PUBLIC LAW BOARD NO. 2452

PARTIES Brotherhood of Maintenance of Way Employees  
TO  
DISPUTE: and  
Western Maryland Railway Co.

STATEMENT Claim on behalf of Welder I. J. Vance and  
OF CLAIM: Welder Helper R. J. Arbuthnot for two (2) hours  
overtime account Track Inspector and Assistant Track  
Inspector cleaning switches at Durbin, West Virginia  
on March 9, 1978.

FINDINGS: By reason of the Agreement dated June 14, 1979, and  
upon the whole record and all the evidence, the Board  
finds that the parties herein are employee and carrier within the  
meaning of the Railway Labor Act, as amended, and that it has  
jurisdiction.

The conference issue raised here is comparable with  
the one contained in Docket No. 2 and resolved in Award No. 2.  
For the reasons stated in said Award No. 2, this issue is  
resolved in favor of the Carrier.

This claim, presented on April 26, 1978, is predicated  
on the allegation that the Carrier violated the Agreement on  
March 9, 1978, when, Track Inspector Jack Fuhrman and Assistant  
Track Inspector Paul Gray were used to clean switches at Durbin,  
West Virginia. Claimants were available for that work. The  
claim is for two hours' overtime.

In denying the claim on June 13, 1978, Carrier's  
Manager of Engineering wrote that neither Fuhrman nor Gray worked  
overtime on March 9, 1978.

Appealing the denial, Employees wrote on July 25, 1978, that while no overtime pay was reflected on Fuhrman's or Gray's time sheets, they actually worked two hours beyond their scheduled hours and they were allowed two hours time off instead of pay, in accordance with the Agreement.

On September 18, 1978, Carrier again denied the claim for two reasons. First, Carrier contends that if additional employees were required on March 9, 1978 to remove the snow, Carrier would have been obliged to call employees from Force 1107 and not the Claimants. Second, there was a heavy accumulation of snow on March 9, 1978 at Durbin, West Virginia. An emergency existed. It was necessary to clear the snow and ice immediately so as to avoid delay of trains. Fuhrman and Gray were working in the area. It was, therefore, proper to utilize their services in the emergency. Claimants were working at Belington, West Virginia, fifty miles away.

It is of no consequence that the Carrier did not raise the issue of emergency in the first instance. It was raised on the property before this claim was submitted to this Board. Nowhere do employees categorically deny that an emergency existed.

For the reasons herein stated, the Board finds that the Carrier did not violate the Agreement and that the claim has no merit.

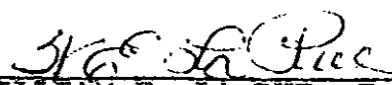
## AWARD

Claim denied.

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DAVID DOLNICK, Chairman and Neutral Member

  
W. C. COMISKEY, Carrier Member

  
WILLIAM E. LA RUE, Employee Member

DATED: April 16, 1980