

PUBLIC LAW BOARD NO. 2960

AWARD NO. 113
CASE NO. 138

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when:

- (a) On November 2, 1983, Trackman John DeGrand and Gregg Larson were required to report at 7 a.m. instead of 7:30 a.m.
- (b) On November 4, 1983, Trackman Gregg Larson was not compensated at the overtime rate from 3:30 p.m. until 6:30 p.m.
- (c) On November 9, 1983, Trackmen John DeGrand, Gregg Larson, Tom Guenther and Brent Berglund were required to report at 7:30 a.m. and remain on the property until 11:30 a.m. but were not compensated therefore.

(2) The Claimants shall be allowed the remedy set forth below:

<u>Name</u>	<u>Employee No.</u>	<u>Hours</u>	<u>Expenses</u>
John DeGrand	118173	1 Hr. OT	\$20.00
		4 Hr. ST	
Gregg Larson	132119	4 Hr. OT	\$20.00
		4 Hr. ST	
Brent Berglund	132234	4 Hr. ST	\$20.00
Thomas Guenther	134558	4 Hr. ST	\$20.00

OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

This case involves three different factual situations." With respect to the claims for November 2 and November 4, there is no basis in this record to resolve the sharp conflicts in the critical facts. For instance, the Claimants contend that on November 2, 1983, they were required to report to duty one-half hour early. Yet, the Carrier claims that according to the work report submitted by the Foreman of Claimant's crew, all members of the crew, including the Claimants, began work at their designated starting time. Thus, there is no basis to make the factual finding necessary to sustain the claim.

A similar irreconcilable set of facts also exists with respect to the claim for November 4. The Claimant bares allegation that he was required to work overtime from 3:30 to 6:30 p.m. However, the Carrier indicated that their records show that the Claimant did, in fact, perform service outside regularly assigned hours from 4:00 p.m. to 6:00 p.m. on November 4, 1983, for which he was allowed 2.0 additional hours pay at the overtime rate.

The last portion of the case relates to November 9. Here, there is general agreement on the facts. On the day in question, the Claimants arrived at the work site with other members of the

Ballast Undercutter Cleaner crew to which all were assigned, and were instructed to remain in their vehicles until the rain had let up enough to begin work. At approximately 11:30 a.m., the crew was directed to begin preparation for the day's work. At a point in time, before the Claimants began work, a conversation took place between them and a Management official. For reasons that are not apparent in the record, nor particularly pertinent, the Claimants resigned their seniority on the Central Division intending to return to their home division before commencing work.

This portion of the claim involves the application and interpretation of Rule 36 which states:

"Except as provided in Rule 12(c), hourly rated employees required to report at the usual scheduled time and place for the day's work, and when conditions prevent such work being performed, will be allowed a minimum of four (4) hours; if held on duty over four (4) hours, actual time so held will be paid for."

It is apparent that the application of Rule 36 is triggered when conditions prevent the employee, who reports at the usual time and place, from working. The compensation provided in the Rule is intended to compensate the employee for the time consumed in waiting for conditions to clear, and when they ultimately, as a result of the weather, are denied an opportunity to work a full day. If they do not work a full day, they are paid a minimum of four hours, or actual time, whichever is greater.

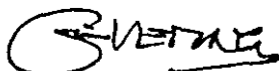
In this case, the weather did clear and the rest of the crew went to work. Therefore, the Claimants were not ultimately prevented from working due to weather conditions, but due to their resignation. Rule 36 was only applied to time spent wait-

ing, if they were sent home because weather conditions caused Management to cancel the day's work. It is only under these limited circumstances that an employee in such situations received pay for time not worked.

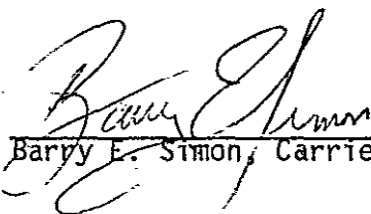
Accordingly, the Claims are denied.

AWARD:

The Claims are denied...


Gil Vernon, Chairman


H. G. Harper, Employee Member


Barry E. Simon, Carrier Member

Dated: April 4, 1986