

PUBLIC LAW BOARD NUMBER 3932

Award Number: 8
Case Number: 8

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

STATEMENT OF CLAIM

"This claim is on behalf of the employees listed for unfair enforcement of rule 52.

On April 4, 1984 the members of G182 (listed) were advised to work in the rain or go home, while T. Lynch, welder in G182 was allowed to complete the day performing miscellaneous duties.

In light of this violation of rule 52, I am requesting 4 hours at the pro rata rate for the affected employees. Please advise if this claim will be honored and the pay period in which it will be compensated.

Foreman	M. J. Holland #172-44-0242	4 hours
T.D.	M. Stankiwiz (sic) #178-50-5532	4 hours
Trackman	A. N. Williams #193-26-4433	4 hours
Trackman	A. L. Williams #193-48-8284	4 hours
Trackman	R. Cannon #176-28-7124	4 hours
Trackman	B. Simbala #168-44-3947	4 hours
Trackman	L. Brown #203-46-2418	4 hours
Trackman	H. H. Nguyen #586-46-8643"	4 hours

FINDINGS

By letter dated April 20, 1984, the Organization filed Claim on behalf of the Claimants seeking compensation on the basis that Carrier violated Rule 52 of the Agreement on April 4, 1984, when it allowed an employee to remain at work while advising the Claimants to either work in the rain or go home.

The issue to be decided in this dispute is whether Carrier violated Rule 52 on the date in question by allowing one employee to complete service while advising other employees to either work or return home.

The Organization contends that Carrier violated Rule 52 of the Agreement through its actions. The Organization contends that Carrier arbitrarily advised the Claimants to return home while allowing another employee (T. Lynch) to remain in service, in violation of the Agreement.

The Organization contends that Carrier violated Rule 52 concerning "Working Less Than Full Day When Weather Conditions Prevent Work Being Performed". The Organization initially argues that Carrier never received proper authorization to send the Claimants home due to inclement weather. The Organization further argues that Rule 52 was improperly invoked since the Claimants' gang consisted of less than the ten men required under that rule. The Organization contends that Carrier in essence admitted that the gang lacked the requisite ten men, since it

alleged that Lynch was disassociated from the Claimants' gang. The Organization argues alternatively that if Lynch is considered part of Claimants' gang, then Carrier violated Rule 52 by giving him preferential treatment over the Claimants. The Organization concludes that under either set of circumstances Carrier violated Rule 52, and that therefore the compensation requested is warranted.

The position of the Carrier is that the Organization has failed to provide any substantive basis for the Claim presented.

Carrier initially maintains that Rule 52 should not have been invoked on the date in question, since the Claimants were given the opportunity to work in lieu of going home. Carrier contends that Rule 52 requires that work be mandatorily stopped by inclement weather, which was not the case. Carrier admits that the rule was involved, but maintains that its use was in error given the circumstances. However, Carrier argues that the offer and acceptance of Rule 52 coverage was entirely proper and fair to the Claimants.

Carrier argues in the alternative that Rule 52, once having been applied, was done so within the parameters of the Agreement. Carrier maintains that the Claimants were compensated four hours' pay as required under Rule 52. Carrier further maintains that the Claimants had full opportunity to work a full day, and thereby receive eight hours' pay. Carrier argues that this

opportunity negates the notion of discriminatory treatment, since both the Claimants and Lynch were entitled to work a full day. Carrier additionally argues that Lynch was involved with different duty in a different location, and was not singled out for special treatment among the claimants' gang.

Finally, Carrier rejects the Organization's position that Rule 52 was inapplicable due to the lack of ten men on the Claimants' gang. Carrier argues that since the Claimants' gang normally consists of 12 men, it meets the ten man requirement of Rule 52. Carrier further argues that Rule 52 does not require ten men be present on the gang on any particular date, since to interpret the rule as requiring such would lead to discriminatory and arbitrary application based merely upon the size of the gang. Carrier maintains that if ten men were not present on the Claimants' gang, which it denies, Rule 52 would nonetheless be applicable in the present case.

After review of the record, the Board finds that the Organization's claim must be denied.

This case presents similar facts to those before this Board in Case No. 7. In that case we found, as we find here, that the Organization has failed to establish any basis for the compensation requested.

Given the conflicting nature of the application of Rule 52

by both parties, this case presents difficult questions concerning the proper application of the rule under the facts presented. However, we find that the applicability of Rule 52 is largely irrelevant, since under any scenario the Organization's claim lacks merit under the Agreement.

Initially, assuming that Rule 52 is inapplicable, as the Organization claims, we do not find that any right has been established to the compensation requested. It is undisputed that the Claimants had the option of remaining on duty and accruing eight hours of pay. The fact that the Claimants voluntarily accepted the option of leaving work with four hours' compensation under Rule 52 fails to indicate any basis for the subsequent request for an additional four hours' compensation. As we stated in Case No. 7, it is questionable whether the Claimants were entitled to four hours' compensation at all under Rule 52 given the voluntary nature of their decision not to work. However, that issue is not before the Board. We find equally unpersuasive the Organization's argument concerning discriminatory treatment. It is undisputed that the Claimants had the same opportunity as Lynch to work a full day, and their voluntary rejection of that option cannot be deemed discriminatory treatment.

Finally, assuming alternatively that Rule 52 is applicable, we find that the Claimants were properly compensated under that rule. Rule 52 requires a minimum four-hour payment when inclement weather prevents the performance of work. Claimants

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were offered and accepted that payment under Rule 52. We therefore find no prejudice or wrongful application of Rule 52 under the facts presented, particularly since the rule was invoked on a voluntary basis by the Claimants. In sum, once the Claimants voluntarily elected to forego service on the date in question, the only real issue is whether they were entitled to four hours' compensation under Rule 52.

AWARD

Claim denied.

Nicholas Pumas
Neutral Member

Sc Hmey
Carrier Member

John Dadd
Organization Member

DATE: 8-26-86