

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13189
Docket No. 13058
97-2-95-2-78

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood Railway Carmen, Division of
(Transportation Communications International Union**
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Chesapeake
(and Ohio Railway Company)

STATEMENT OF CLAIM:

"Claim of the Committee of the Union that:

1. That the Chesapeake and Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter 'Carrier') violated specifically CSX Labor Agreement #16-48-92 when the Carrier allowed and/or permitted carmen from Clifton Forge, Virginia to do line-of-road work of repairing freight car B&O 162179 wheels and truck components while at milepost marker 47 at Pemberton, Virginia on April 25, 1994, to other than Richmond Carmen.

2. That, accordingly, the Chesapeake and Ohio Railroad Company (CSX Transportation) be ordered to additionally compensate Carmen F.J. Lavenia, ID #620770, and L. Goettl, #321219, 6 hours at the applicable straight time rate in accordance with the Shop Craft's Agreement, Rule 7(c) for said violation of CSX Labor Agreement #16-48-82."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This claim arises from Carrier's assignment of Clifton Forge point seniority employees rather than Claimants, Richmond point seniority employees, to perform line-of-road repair work on April 25, 1994 at Pemberton, Virginia. The record reflects that Richmond is located 50 miles from Pemberton while Clifton Forge is located approximately 179 miles from Pemberton.

The Organization asserts that the following provision of Labor Agreement No. 16-48-92 effective May 18, 1992 specifically entitles Richmond Carmen to perform this type of line-of-road work:

"All carman work for CSXT at Richmond and all carman work for RF&P at Richmond, including line-of-road work performed for the respective carriers, will be consolidated and thereafter performed on a coordinated basis under the C&O collective bargaining agreement."

The Organization also argues that Richmond Carmen have historically performed the line-of-road work in question, with or without Carrier's equipment from Richmond. It avers that since Claimants were the first available men out on the Overtime Board on April 25, 1994, they are contractually entitled to this work, and should receive the compensation requested. The Organization relies upon Second Division Award 11898 in support of its claim.

Carrier argues that on the date in question there was no vehicle at Richmond equipped with a crane or a compressor for jacks which were necessary to change the wheels on the line-of-road repair. Carrier also asserts that the work in question is not reserved exclusively to employees at Richmond, who have contractual point of employment seniority. It notes that this assignment was the first instance of utilizing non-Richmond employees since the removal of the Hoesch road truck from Richmond

for infrequent usage in 1990, an action which was not protested by the Organization. Carrier relies upon the following Second Division Awards in support of its position that the claim should be denied: 10794-10800, 10938, 11083, 11085, 11324.

A careful review of the record reveals that Carrier maintains point seniority, and that Richmond and Clifton Forge are two distinct seniority points. Since Claimants were not furloughed at the time, the cases dealing with Carrier's responsibility to recall furloughed employees at the seniority point involved to perform a minimal amount of work are not relevant to our determination.

What is relevant to the issue before us is not only the importance of point seniority and the preservation of contractual and historical assignments of work, but the temporary and incidental nature of the work involved in this case and the lack of evidence of any attempt by Carrier to circumvent the requirements of point seniority or the language of Labor Agreement No. 16-48-92. The record in this case clearly establishes that Carrier generally sends Carmen from Richmond to perform line-of-road work in the vicinity in accord with the language of Labor Agreement No. 16-48-92. The Organization has not disputed the fact that specialized equipment was needed to perform the line-of-road repairs in issue. Neither has it contested Carrier's evidence that this is the first instance since removal of the specialized equipment needed for these repairs in 1990 that employees from another seniority point where the necessary equipment exists were called rather than Richmond employees. Under such circumstances the Board holds that the work in issue was de minimis, and adopts the following finding and rationale expressed in Second Division Award 10938 in denying this claim:

"... The Board finds the work performed in this case to be of a similar temporary and incidental nature with no evidence Carrier is attempting to circumvent the concept of point seniority. The caveat contained in Second Division Award Nos. 10794-10800 with respect to the importance of point seniority is reaffirmed. A pattern of conduct or other evidence of an incident by the Carrier to subdivide work tasks in an effort to avoid the ramifications of point seniority, is not condoned by denial of the Claim in this case."

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 23rd day of December 1997.