

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc.
(formerly The Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier permitted B&O Railroad section employees to perform track work on the B&O crossing diamond at Wellsboro, Indiana on September 18, 1987.

(2) The Agreement was violated when the Carrier permitted Grand Trunk Railroad section employees to perform track work on the Grand Trunk crossing diamond at Wellsboro, Indiana on September 22, 1987.

(3) The Agreement was violated when the Carrier permitted B&O Railroad section employees to perform track work on the C&O side track between the Grand Trunk and B&O diamonds, and a run off to the north of the B&O diamond to the loop wye at Wellsboro, Indiana on September 25, 1987 [System File C-TC-4010/12(87-1324) CON].

(4) As a consequence of the violations referred to in Parts (1), (2) and (3) above, furloughed C&O employees James Brasfield, Kenneth McInnis, James Burch, Joe McGill and Donald Maloney shall each be allowed pay at their respective pro rata rates for an equal proportionate share of the ninety-six (96) man-hours expended by the outside forces performing the work referred to in Parts (1), (2) and (3) above. In addition, each Claimant shall receive three (3) additional days' credit for vacation qualifying purposes."

FINDINGS:

The Third 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 employees 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 waived right of appearance at hearing thereon.

On the dates cited in the Claim, the Carrier scheduled its Maintenance of Way forces to performance maintenance and raising of crossing diamonds at Wellsboro, Indiana. The work was performed on Carrier's property. Additional forces covered by separate Agreements, from railroads also involved in the crossing diamonds' use, were also employed.

The Organization does not dispute the use of the other forces "to perform their runoffs from our having raised the diamond." The Organization argues, however, that these forces were employed to "assist" Carrier employees in work on the diamond itself.

The Carrier maintains that this coordination of forces at crossing diamonds is well established practice, while the Organization contends that work on the crossings has been regularly performed solely by Carrier forces.

In the Board's view, the record fails to provide convincing proof as to the unwavering practice concerning the assistance provided in this type of operation. As the moving party, it remains the Organization's burden to demonstrate that the working arrangement did not conform to accepted practice, as well as to show the exact nature and extent of such assistance. In this position, a sustaining Award is not warranted.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1991.