

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 Carrier violated the Agreement when it assigned Welder Lemaster instead of Trackman R. L. Burns to perform trackman's work on the Big Sandy Subdivision on November 2, 1987 [System File C-TC-2566/12(88)-174)].

(2) As a consequence of the aforesaid violation, Mr. R. L. Burns shall receive pay for:

'... eight (8) hours at the applicable rate, also credit toward his vacation and any other benefits he may have lost by not being called to work as a trackmen (sic).'"

FINDINGS:

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

The carrier or carriers and the employe 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.

This dispute arose when the Carrier allegedly utilized a welder to remove crossing boards and clean culverts for eight hours on November 2, 1987. The Claimant was a furloughed trackman who was not recalled to perform trackman's work. The Organization contends that the Carrier's action violated Rules 2, 3, 5 and 66 of the Agreement.

The Carrier argued that the welder was shown as performing boutet welding on November 2, 1987. Carrier maintains that the welder assisted in removing a crossing board only because the regular welder helper was away from the job. Carrier further maintains that the time involved only two hours and the work performed did not include cleaning culverts.

As a preliminary point the Ex Parte Submissions of both parties include arguments not presented on property. This Board does not consider new material.

In the case at bar the Organization has carried its burden of proof. It has provided a signed statement from the welder that he did perform trackman's work and clean out culverts for eight hours on November 2, 1987. The Roadmaster's letter of January 27, 1988, does not contain substantial information to refute the Organization's proof. A careful reading provides no evidence that the welder did not perform trackman's duties for eight hours as claimed.

The Carrier on property and before this Board has presented Public Law Board 4138, Awards 2, 3 and 4, as well as, Third Division Award 27979 (between these same parties) as support for its position. The Carrier argues that it is not required to recall a furloughed trackman when qualified track subdepartment employees are available, as in the instant case.

A careful review of the Awards of Public Law Board 4138 show them to involve Rule language very different from the instant Rule. Awards of Public Law Board 4138 involve a Rule which permits machine operators when not needed on machines to perform other work in their respective subdepartments. Rule 2 of this Agreement indicates that a clear distinction was negotiated as to seniority rights by classes in which seniority was established as designated by Rule 3(a). Rule 3 shows that the parties clearly meant to separate welders from track laborers. Past Awards have recognized this fact (Third Division Awards 25700, 25701, 24521). Finding no Rule providing exception on this property (as existed in Public Law Board 4138), trackmen's work must be performed by trackmen. Similarly, our study of Third Division Award 27979 (and Organization's Dissent) finds that its logic was based upon substitution or supplementation of work and other issues not before us. It is not accepted by this Board as authority in this case.

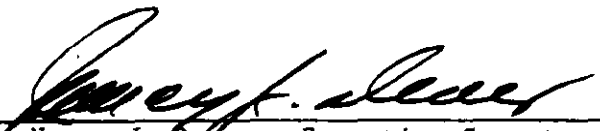
Consequently, we find in this record a clearly stated Rule restricting the Carrier. Substantial evidence of record in the form of the welder's letter indicates he was made to perform laborer's work for eight hours. We find that the Agreement was violated. Welders and track forces are separate and the disputed work clearly belonged to trackmen.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1991.