

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister 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 Blacksmith Welder B. McComis and Blacksmith Welder Helper M. Spencer instead of Trackmen K. McGee and J. Harrison, III to clean snow from switches at Walbridge, Ohio on February 11, 1988 [System File C-TC-4058/12(88-464) CON].

(2) As a consequence of the aforesaid violation, Messrs. K. McGee and J. Harrison, III shall each be allowed pay for eight (8) hours at their straight time rate and three (3) hours at their time and one-half rate. In addition, they shall each be allowed one days' credit for 1988 vacation qualify 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.

As Third Party in Interest, the International Brotherhood of Boilermakers and Blacksmiths was advised of the pendency of this dispute and filed a Submission with the Division.

This dispute stems from the assignment of two (2) employees covered by the Blacksmith's Agreement being assigned to clear snow from switches in Yard D at Walbridge, Ohio, on February 11, 1988. The Organization contends two (2) furloughed trackmen were available for this work, but were not called. According to the Organization, Rule 1, Scope, and Rule 35 1/2, Classification

of Work, controls the disposition of this claim. Arguing that Rule 35 1/2 requires track forces to perform all work in connection with construction, maintenance, or dismantling of track facilities, including the right of way, the Organization insists the work of clearing snow from tracks is placed within the scope of the Agreement. Noting the Carrier's contention that the assignment of Blacksmith forces was necessary due to an emergency, the Organization maintains the Carrier failed to support its position with probative evidence.

The Carrier responded to the Organization's initial claim stating in relevant part that "heavy snow and severe weather conditions existed at Walbridge Yard, greatly deterring operations, resulting in emergency conditions." In the advancement of this claim thereafter, the Carrier consistently took the position that in an emergency situation, it had considerably more latitude in the assignment of forces during an emergency and that it has historically assigned people other than trackmen to remove snow in like situations. Almost eleven months from the filing of this claim, the Organization advised the Carrier of its intention to file with the Third Division. In so doing, the Organization rejected the Carrier's emergency argument stating that snow in the affected area occurs daily and with "... advanced methods used in forecasting the weather, it can be predicted days in advance."

The Board considers this latter assertion singular and lacking in merit. In addressing so-called "advanced methods," the Organization claims weather can be predicted days in advance. This is generally true, but ignores the problem of accuracy. If the Organization infers that such forecasting eliminates the possibility of emergency weather conditions by reason of notice, it has presented no evidence to support this new theory.

Herein, the Carrier makes a prima facie case that emergency conditions existed. It asserted that on May 2, 1988, the snow was heavy creating extreme conditions. The Carrier also explained all basic forces were offered overtime before offering work to others. At no point did the Organization rebut these contentions except for its attempt to void the possibility of emergency weather conditions because of asserted and unidentified forecasting.

In Third Division Award 14321, the Board distinguished between augmenting forces and substituting. It also stressed the Claimants were performing routine maintenance on a day the Carrier contended it could, under emergency conditions, utilize other than track department employees to remove snow. In referring to the use of other than track department employees to remove snow in emergency situations, the Board stated, "We wholeheartedly endorse this principle which we have previously enunciated."

The Board finds the Carrier established emergency weather conditions prevailed on February 11, 1988. The Carrier further argued without rebuttal that in the past and in like weather situations, it utilized other than trackman forces for snow removal. Given the above, the Organization has failed to show that under such weather conditions, the work of clearing snow from switches to allow continued operations is exclusively reserved to trackmen.

Form 1
Page 3


Award No. 28820
Docket No. MW-28770
91-3-89-3-155

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1991.

LABOR MEMBER'S DISSENT
TO
AWARD 28820, DOCKET MW-28770
AWARD 28821, DOCKET MW-28771
AND
AWARD 28822, DOCKET MW-28772
(Referee McAllister)

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Each of these dockets involved the Carrier assigning either blacksmiths, track inspectors or foremen to perform snow cleaning work on February 6, 7, 11, 12, 13 and 15, 1988 at Walbridge, Ohio. Walbridge is located southeast of Toledo, Ohio and is approximately eight (8) miles from the shore of Lake Erie. The average yearly snow fall for this area is approximately forty (40) inches. Since this Carrier has operated through this area for at least one hundred (100) years, it seems that a defense of snow emergency lacks credibility. However, the Majority, in its infinite wisdom, chose to give credibility to Carriers argument and held in Award 28820 that "The Board finds the Carrier established emergency weather conditions prevailed on February 11, 1988. ***" Without conceding an emergency existed for that day, but for the sake of argument that such was the case, how could the Majority then find that the alleged emergency continued on February 12, 1988 (Award 28221) or February 13 (Award 28821) or February 7 following the initial snow fall on February 6 (Award 28822). As Third Division Award 23861 held:

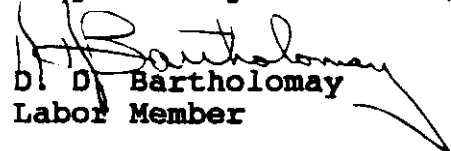
"*** The Board will take judicial notice that severe snow storms in this section of the country are not rare. Because of the necessary time involved in implementing the assignment mandated by Rule 6 under these circumstances, the Board will grant that the first day of the

Labor Member's Dissent
Awards 28820, 28821 and 28822
Page Two

"storm would make it practically impossible to assign Claimant to operate the backhoe. However, absent a showing by Carrier that it was not possible for Claimant to travel in a safe and reasonable manner the twenty miles to Madison, Claimant should have been assigned to operate the backhoe. No such showing was made, therefore the Agreement was violated."

These awards are palpably erroneous and I therefore dissent.

Respectfully submitted,


D. D. Bartholomay
Labor Member