

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 Terminal Engineer J. Bipus, Roadmaster T. Sullivan and Project Engineer J. Erickson to perform track work at Walbridge, Ohio from October 5 through November 6, 1987 (System File C-TC-4039/12(88-180).

(2) As a consequence of the aforesaid violation, furloughed Trackmen L. Dannenberger, F. Fisher, J. Lockhart, R. Timpe, D. Blankenship, T. Klink, P. Main, R. Humes, A. Adams, L. Gloria, A. Korte, Jr. and M. Rayden shall each be allowed pay at their respective rates for an equal proportionate share of the two hundred forty (240) man-hours of track work expended by the supervisors mentioned in Part (1) above."

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.

This dispute involves the alleged performance of trackman's work by three Supervisors on a regular basis in violation of the Agreement. The Organization argues that from October 5, 1987 through November 6, 1987, for "eight (8) hours or more" each day they performed work reserved to the Maintenance of Way employees under the Scope of the Agreement and Rule 35 1/2. Claim is made only for October 26 through November 6, 1987.

A careful review of the facts fails to firmly establish a basis for this Board to find in favor of the Organization. An analysis provides support for the assertion that Supervisors performed some instructional/supporting

trackmen's work. The Carrier does not deny that for instructional purposes related to assuring that proper procedures were followed, minimal work was performed, and "purely of a supervisory nature." The Board finds no rule language prohibiting the admitted actions. We further find no evidence that the admitted work was in violation of the Agreement. The photographs do not demonstrate that Supervisors expended two hundred forty (240) hours of trackman's work at the Union Street project. Statements from the Supervisors adamantly deny the allegations.

The burden of proof rests with the Organization. We find insufficient probative evidence that the three Supervisors performed 240 hours of trackman's work at the Union Street project, Walbridge, Ohio, on the dates of the Claim. We find no contract language prohibiting Supervisors from the actions demonstrated herein. This is not to deny that track sub-department work, which is the subject of this dispute, accrues to the employees, only that it has not been shown that Supervisory personnel were involved in doing such work in a manner precluded by practice or Agreement. It has not been demonstrated by the Organization that the Carrier has violated the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

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