

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 Agreement was violated when the Carrier assigned Foreman J. Chamblee of Force RGB3 instead of furloughed Trackman J. C. Bell to perform trackman's work on October 5, 6, 7, 8 and 9, 1987 (System File C-TC-4157/12-(87-1330).

(2) As a consequence of the aforesaid violation, Mr. J. C. Bell shall be allowed forty (40) hours of pay at the appropriate trackman's rate with such time to be credited 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.

According to the Organization, a Foreman performed trackman's work for eight hours on each of the five dates of Claim. This work, argues the Organization, should have been performed by the Claimant, who was furloughed as a trackman at the time. The Carrier acknowledges that the Foreman performed some trackman work, but submits he also performed all his Foreman duties and did not take the place of a trackman.

The Claim herein based upon a March 1, 1986, Agreement and accompanying Letter of Interpretation dated September 9, 1987. The Agreement provides, inter alia, as follows:

"2. Foreman will participate in the work of the force to which they are assigned to the extent that this does not conflict with their foreman duties; however, they will continue to have complete control of their force."

The Letter of Interpretation attempts to clarify the intent of the above provision. It states:

"It is not the intent of the foregoing that the Foreman replace Trackmen or B&B Mechanics. They are to only assist in unusual situations or sporadically when needed, it being the intent of the parties that employees assigned Foreman positions will be productive when not otherwise engaged in the performance of their Foreman's duties."

The only evidence before this Board as to the work performed by the Foreman on the dates in question is the Foreman's own statement, which reads as follows:

"On October 5, 6, 7, 8, 9, 1987 I replaced a trackman by performing the duties of a trackman for eight (8) hours a day each day in question. On the dates listed I unloaded ties, installed cross ties and unloaded spikes off the 'New Lead' in Newport News, Virginia."

While the February 20, 1986, Agreement allows the Carrier to require a Foreman to perform trackman work in addition to his regular duties as a Foreman, the Letter of Interpretation recognized certain limitations on the Carrier's right to do so. Most importantly, the Foremen "are to only assist in unusual situations or spordically when needed." We take this to mean the Foremen may perform trackman work only if some conditions out of the ordinary arises or on a sporadic basis. As the Carrier has not suggested there was any unusual situation present on the dates of Claim, we must determine whether or not the work performed by the Foreman was sporadic. As the parties have not defined the term "sporadic," we may be guided by the dictionary definition of the term. Webster's New World Dictionary defines "sporadic" as follows:

"1. happening from time to time; not constant or regular; occasional 2. widely separated from others, scattered. or isolated in occurrence; appearing singly, apart, or in isolated instances."

The performance of trackman work for a forty hour work week goes beyond the definition of sporadic. With his signed statement, the Organization has made a prima facie case that the Foreman performed this much work.

Other than an assertion that he performed all his Foreman's duties, the Carrier has offered no evidence from which we could reach such a conclusion. Accordingly, we must conclude the Carrier went beyond the intent of the February 20, 1986, Agreement. The Foreman's work effectively replaced a trackman.

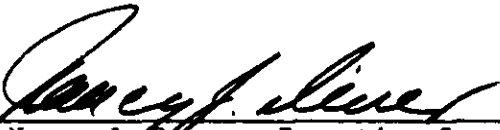
Under the provisions of Rule 5, the Claimant had a right to be recalled for temporary or extra work. He is entitled, therefore, to the earnings he would have received.

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 24th day of September 1991.