

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers 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 Equipment Operator L. Pancake, Foreman S. R. Walters and Welder P. Johnson to perform trackman's work at Wynn Yard on the Jones Creek Subdivision from November 23 through 27, 1987 [System File C-TC-2564/12(88-176)].

(2) As a consequence of the aforesaid violation, furloughed Trackmen R. L. Burns, T. Burchett and J. A. Harris shall each be allowed five (5) days' pay at their applicable straight time rate."

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 employes involved in this dispute are respectively carrier and employes 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.

From November 23 through 27, 1987, the Carrier utilized a track foreman, an equipment operator, and a welder to repair a track that had been damaged in a derailment; at the time, the Claimants all were on furlough. The Organization thereafter filed a claim, contending that the Carrier's failure to call the Claimants to perform the work in question violated the Agreement. The Carrier denied the claim on grounds that the employees who performed the work did not work out of their respective classes.

The parties being unable to resolve the issues raised by the claim, this matter came before this Board.

This Board has reviewed the record in this case and we find that the Carrier has not violated the Agreement. Therefore, the claim must be denied.

Rule 66, entitled Classification, states as follows:

"(a) Proper classification of employees and a reasonable definition of the work to be done by each class for which just and reasonable wages are to be paid is necessary but shall not unduly impose uneconomical conditions upon the Railway.

Classification of employees and classification of work, as has been established in the past, is recognized."

Rule 13(d) states as follows:

"In an effort to keep roadway machine operators employed with regularity as much as work conditions will permit, it is agreed and intended as a part of this revised arrangement that when roadway machine operators are not actually operating the machines with which assigned, but are still under pay as roadway machine operators, they will be required to assist the force with which they are working to perform such work as they are capable of performing on their particular project or type of work in which the force is engaged at the particular time."

Moreover, in the Memorandum Agreement of February 20, 1986, it states in Section 2 that:

"Foremen 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.

Finally, the parties have also agreed that . . . 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 record reveals that the Welder was called to the derailment for the primary purpose of cutting bolts out of the joints and rail where needed. That did not require his entire time, and he was utilized properly in other work clearing the derailment. It would not have been justified to recall furloughed employees to perform the work.

The Equipment Operator was called to the derailment to operate a backhoe. Rule 13(d) allows the Carrier to utilize personnel when they are not operating their own machines to assist the force in other capacities.

Finally, the Foreman was called to supervise and direct the derailment. He is allowed to participate in the work as set forth in the above Memorandum Agreement.

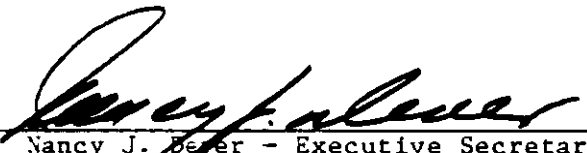
As set forth in the above quotations from the Agreement, the Carrier has the right to assign work in order to avoid uneconomical use of its employees. There are different restrictions on the Carrier's assignments; and, in some instances, the Carrier must recall furloughed employees. However, in this case, the Carrier had no such requirement and the Organization has failed to meet its burden of proof supporting the claim. Therefore, the claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1992.