

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29579  
Docket No. MW-28840  
93-3-89-3-224

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 Track Inspectors B. Moses and D. Stamper instead of Trackmen J. L. Holbrook and J. A. Browning to perform track work at M.P. 511.1 at Kenova, West Virginia on February 14, 1988 [C-TC-4311/12(88-460) COS].

(2) As a consequence of the aforesaid violation, Trackmen J. L. Holbrook and J. A. Browning shall each be allowed eight (8) hours of pay at the trackman's rate and they shall each receive one (1) day's credit 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 employe or employes involved in this dispute are respectively carrier and employe 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.

On February 14, 1988, a major derailment occurred at Kent, West Virginia, the Carrier's main line connection resulting in all traffic being backed up.

Because of the emergency situation, the Assistant Roadmaster began an exhaustive search for employees assigned in this area to perform the emergency work, finally calling in the Track Inspectors who hold seniority in the Trackman classification. They worked along with three trackmen for a total of eight (8) hours before service was restored.

The Organization filed a claim on behalf of the Claimants contending that they should have been called for this emergency work since they had notified the Carrier at the time of their lay-off of their desire to be used for extra and temporary work with respect to Rule 5(a) and (c) of the Agreement. The Claimants were fully qualified to perform this emergency work and were available to do so had the Carrier given them the opportunity.

The Carrier denied the claim contending that it was justified in using every possible alternative considering this was an emergency situation affecting the main line; and also stating that it had no obligation to call furloughed employees to perform emergency work.

This Board has reviewed the record in this case and we find that the Organization has not met its burden of proof to support its claim that the Carrier violated the rules when it utilized Track Inspectors to perform work involving the derailment on February 14, 1988.

The record is clear that an emergency existed when the derailment occurred. Appendix G, Article II, Section 6 states the following:

"Track Inspectors will not be called out to perform work of regularly assigned trackmen, or track foremen, who, when available, would ordinarily be called to perform such service on rest days, holidays, and outside of regularly assigned hours within their regularly assigned work week."

The Claimants in this case were not regularly assigned, but were on furlough at the time of the derailment. They were not available as contemplated by the rule. The Carrier made an effort to call in all available regularly assigned trackmen and foremen and other employees in the area, and only then did the Carrier call in the two track inspectors involved in this case. Emergency situations afford a Carrier a great latitude in assigning its forces in an effort to clear the emergency and return to full operation.

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The Organization simply has not substantiated its case in this matter with sufficient evidence. The Third Division Award 28684, cited by the Organization, involved a foreman who performed more extensive work than he should have according to that rule. The instant matter was substantially different, especially since it involved an emergency situation and two track inspectors.

For all of the above reasons, the claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.