

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29655  
Docket No. MW-29425  
93-3-90-3-359

The Third Division consisted of the regular members and in addition Referee Charlotte Gold 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 junior Trackmen M. A. Mullins and K. Sparks instead of W. Maybrier and D. D. Maybrier to perform trackmen's work at Russell, Kentucky from April 3 through May 15, 1989 [System File C-TC-4942/12 (89-662) COS].

(2) As a consequence of the aforesaid violation, Messrs. W. Maybrier and D. D. Maybrier shall each be allowed two hundred forty (240) hours of pay at their respective straight time rates."

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.

The Claimants each seek 240 hours of pay at the straight-time rate for the period between April 3 and May 15, 1989, when Carrier allegedly failed to recall them to perform temporary work in Russell, Kentucky.

On April 12, 1989, Carrier advertised two permanent Trackmen positions on Force 6G21 in the Central Region. Claimants, who were furloughed, bid on and ultimately were awarded the jobs. On April 3, 1989, prior to bulletining the positions, Carrier filled them on a temporary basis by utilizing two Trackmen junior to Claimants. The junior Trackmen remained in the positions until Claimants reported for duty on May 15, 1989.

In brief, the Organization argues that Claimants were willing and available to work the temporary positions, but that Carrier failed to recall them, utilizing junior employees in their stead. It maintains that the clear language of Rules 2 and 5 overrides any alleged past practice of filling temporary regional positions with those who specifically ask for them. Carrier's view of the claim is best characterized by a statement made by its Senior Manager Labor Relations on October 5, 1989, in a letter to the General Chairman:

"Any failure to protect the work was their fault and not the Carrier's. The jobs were filled in accordance with the agreement and in the exact manner in which they have been filled historically. They cannot dodge or refuse the work and then claim same in the form of a time claim."

In the final analysis, this Board is left with an irreconcilable dispute over the facts of this case, with Carrier alleging that written notices about the jobs were sent to the Claimants' homes and that Claimants had been told that regional jobs were available pending assignment, but that no permanent vacancies existed. Carrier maintains that Claimants declined the temporary assignments and that while informed on May 1, 1989, that they had been awarded permanent jobs, they elected not to appear until May 15. Claimants, on the other hand, maintain that they asked about the availability of temporary jobs and were told that no such work existed. Further, they contend that they did not receive notification about their assignments on May 1.

Given the lack of probative evidence in the record to support Claimants' contentions, this Board is unable to sustain this claim. While the presence of telephone bills indicate that calls were made on certain dates, the Board has no way of knowing what was or was not said in those conversations. Because the Organization bears the burden of proof in a dispute such as this and has failed to meet that burden, the claim must be dismissed.

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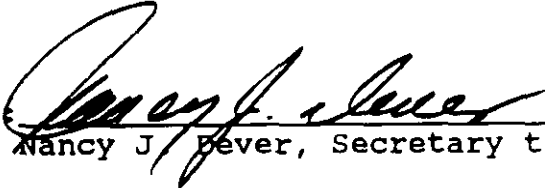
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A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Bever, Secretary to the Board

Dated at Chicago, Illinois, this 7th day of June, 1993.