

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29658
Docket No. MW-29247
93-3-90-3-126

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr., 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 junior employees V. Richmond, P. Roach and M. Martin instead of senior furloughed Class A Machine Operators J. Simms, S. W. Vandall and C. Burdette to fill temporary vacancies in the Class A Machine Operator's rank at Swiss, West Virginia beginning November 7, 1988 and continuing [System File C-TC-4720/12(89-354) COS].

(2) As a consequence of the violations referred to in Part (1) above, the Claimants shall be compensated as follows:

(a) Mr. J. Simms shall be allowed pay at the Class A Machine Operator's rate for one hundred twelve (112) straight time hours and thirty-seven (37) overtime hours.

(b) Mr. C. Burdette shall be allowed shall be allowed pay at the Class A Machine Operator's rate for eighty (80) straight time hours and thirty-seven (37) overtime hours.

(c) Mr. S. W. Vandall shall be allowed pay at the Class A Machine Operator's rate for one hundred twenty (120) straight time hours and thirty-seven (37) overtime hours."

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.

This dispute concerns a segment of track under the joint control of the Carrier and Conrail at Swiss, West Virginia. In November 1988, three Conrail employees surfaced the track. While the Conrail employees were at work, the Carrier upgraded an equal number of active employees to Class A Operator rate of pay. This paralleled an arrangement made two years earlier in 1986.

The Organization contends that three furloughed Class A Machine Operators should have been recalled to perform the work and that the situation is not remedied by providing an upgrade to the three Carrier employees.

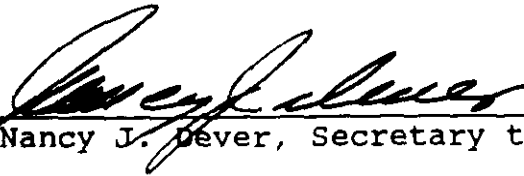
There are substantial variances in the arguments set forth in the Organization's submission as compared to its Claim on the property. The Organization has not met its burden of proof in establishing a Rule violation as to the work performed by the Conrail employees at the joint facility. Failing this, argument as to the arrangement (duplicating that made in 1986) is without significance.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever, Secretary to the Board

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