

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30226  
Docket No. MW-29749  
94-3-91-3-98

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. (former 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 Machine Operator J. Gray instead of Mr. D. R. Johnson to fill a machine operator position (spike puller) on the Curve Patch Force on January 2, 3, 4, 8, 9, 10, 11, 15, 16, 17, 18, 22, 23, 24, and 25, 1990 [System File C-TC-5098/12(90-299) COS].
- (2) The Agreement was further violated when Roadmaster M. Lee performed track laborer's work on the Curve Patch Force throughout the day on January 10 and 11, 1990.
- (3) The Agreement was further violated when Foremen D. Oney and J. Lee performed track laborer's work on the Curve Patch Force throughout the day on January 10, 1990.
- (4) As a consequence of the aforesaid violations, Mr. D. R. Johnson shall be allowed one hundred fifty (150) hours of pay at his respective straight time rate and he shall be credited with fifteen (15) additional days of vacation qualifying time for 1990."

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.

The Claimant, holding seniority as a Machine Operator, was furloughed on December 29, 1989. Retained as a Track Laborer on Gauging Force 6G23 was another employee with greater Trackman seniority than the Claimant. The other employee was also qualified as a Machine Operator, but had less Machine Operator seniority than the Claimant.

According to the Organization and not specifically disputed by the Carrier, the other employee was "temporarily" upgraded as a Machine Operator for four weeks commencing January 2, 1990, -- almost immediately after the Claimant's commencement of furlough. The Carrier does not dispute the Claimant's qualification for such work nor that his Machine Operator seniority is greater than the employee who was utilized.

There appears to be some dispute as to whether the Claimant did or did not specifically request the opportunity to displace as a Machine Operator. The Board does not find this to be determinative. Proper application of seniority Rules clearly should have resulted in the recall of the Claimant for the work. This is emphasized by the fact that the work in question commenced almost immediately after the Claimant's placement in furlough status.

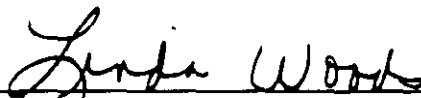
With this conclusion, there is no need for the Board to review the aspects of the Claim concerning work allegedly performed by the Roadmaster and/or Foreman, since the Claim as to Machine Operator covers the same dates.

AWARD

Claim (1) and (4) sustained. Claim (2) and (3) dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.