

Form 1 RECEIVED

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

JAN - 5 1995

G. L. HART

Award No. 30640
Docket No. MW-29359
94-3-90-3-272

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier recalled furloughed trackmen instead of furloughed Bridge and Building Mechanics M. G. Carmean, J. R. Engel, J. A. Houston and R. L. Sears to perform bridge work on Bridge 107.05 in Poca, West Virginia, beginning December 5, 1988 through December 29, 1988 (System Docket MW-357).
- (2) As a consequence of the aforesaid violation, Messrs. Carmean, Engel, Houston and Sears shall each be allowed one hundred (100) 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 employee or employees involved in this dispute are respectively carrier and employee 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 therein.

Parties to said dispute waived right of appearance at hearing thereon.

On January 16, 1989, the Local Chairman filed a claim asserting that, as a matter of fact, the Carrier had recalled four Trackmen to do painting, dismantling, and clean-up work on Capital Bridge Project No. HD697. The claim contends that this alleged action (having Trackmen do bridge work) violated the agreement because it was work exclusively reserved to them pursuant to the Scope Rule as well as Rules 1 and 3. The claim impliedly recognized that the Claimants were fully employed at the time of the claim. However, they were furloughed shortly after the project in question was finished. It was on this basis that it was argued that there was a loss of work opportunity. In the Organization's opinion, the project could have been delayed so that the Claimant's season would have been extended.

There are a number of issues presented by this case. The central question, however, is whether the Claimants have entitlement to the work in question. As noted, the Organization asserts an exclusive reservation based on the relevant rules. In spite of their arguments, a review of those rules does not support their argument. The Scope Rule states, in pertinent part:

"The listing of the various classifications in Rule 1 is not intended to require the establishment or to prevent the abolishment of positions in any classification, nor to require the maintenance of positions in any classification. The listing of a given classification is not intended to assign work exclusively to that classification. It is understood that employees of one classification may perform work of another classification subject to the terms of this Agreement."

Obviously, such language leaves one wondering why the Parties have separate classifications. To have separate classifications as well as seniority is paradoxical in view of Paragraph 4 of the Scope Rule. These classifications and separate seniority must mean something, and there, indeed, must be some reasonable limits on the cross assignment of work between classifications.

The Board, however, does not intend to make any rulings on this broad, general question. It is necessary only to resolve the paradox that exists in the rules in the context of these particular facts and circumstances. It is our conclusion that, in this instance, Management did not abuse its discretion when assigning what might ordinarily be considered B&B work to Trackmen. The principal consideration here is the fact that the Claimants were fully employed. Further in this connection, nothing in the agreement would necessarily require the Carrier to delay the project, particularly in light of the end of the season push.

Form 1
Page 3

Award No. 30640
Docket No. MW-29359
94-3-90-3-272

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 28th day of December 1994.