

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 31187  
Docket No. MW-30908  
95-3-92-3-762

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(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, beginning January 10, 1991, when the Carrier failed to fill a Maintenance of Way laborer's position at the Barboursville Reclamation Plant [System File C-TC-7332/12(91-343) COS]
- (2) As a consequence of the violation referred to in Part (1) above, furloughed Maintenance of Way Laborer S. Carico shall be compensated at his respective rate of pay for eight (8) hours each date, retroactive sixty (60) days from date claim was filed, and such shall be credited to him 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 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 herein.

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

The claim at bar involves the allocation of Laborer positions. The negotiated Agreement provides for a distribution of Laborer positions between employees represented by the Organization and

employees represented by the International Brotherhood of Firemen and Oilers. The central issue here is whether the Carrier violated the Agreement when it failed to allocate an open position to the Claimant.

The Organization argues that beginning January 10, 1991, the Carrier violated Appendix A of the Coordination Agreement due to the fact that under Section 2(d) and other provisions, the working of three Fireman and Oilers Laborers and only one Maintenance of Way Laborer was out of balance. The Organization asserts that it presents a valid claim in that there was only one active Maintenance of Way Laborer working even if others may have been on the roster. Under the Agreement, the Organization argues that with four Laborers working, the equitable distribution could only have been a fifty-fifty allocation of two Firemen and Oilers and two Maintenance of Way employees.

It is the position of the Carrier that no violation occurred and that the distribution was not out of balance. Under the Coordination Agreement, the positions were correctly allocated. When five positions existed the extra position went to a Firemen and Oiler. The Carrier points out that one of the two Maintenance of Way positions was a temporary vacancy, without requirement to fill or abolish for 30 days.

Considering the merits, the Board read the Coordination Agreement and the contested Agreement provisions. The Organization did not rebut the Carrier's right under the controlling language to leave a position vacant by illness for 30 days. The Carrier stated in its correspondence dated May 29, 1991 that before the 30 day period elapsed "one of the Firemen and Oilers positions was recalled to military service and his position was abolished, thereby leaving the proper allocation."

The Board finds no denial of the above stated facts, but an argument by the Organization centering upon active employees. The Memorandum Agreement contains no language referring to active employees, but relates to positions. There is no probative evidence presented that the Agreement or even the intent of the Agreement inferred such applicability. The Board finds no violation of the Agreement and denies the claim.

**AWARD**

Claim denied.

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ORDER

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 26th day of September 1995.