

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31455
Docket No. MW-31531
96-3-93-3-528

The Third Division consisted of the regular members and in addition Referee Robert Richter 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 or otherwise permitted Track Foreman J. Bell to perform trackman's work while assigned on Force 5GB2 at New Port News, Virginia from May 2 through 29, 1992 instead of recalling and assigning furloughed Trackman J. Chamblee to perform said work [System File C-TC-5383/12(92-1018) COS]

(2) As a consequence of the violation referred to in Part (1) above, Mr. J. Chamblee shall be compensated for all wage loss suffered [eight (8) hours per day plus any overtime], at the trackman's straight time and/or time and one-half rate, for the total number of man-hours expended by Foreman Bell in performing the trackman's work from May 2 through 29, 1992."

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.

Claimant is a Trackman who was in a furlough status at the time the claim was initiated. The Organization claims that a Track

Foreman was assigned to perform Trackman's work from May 2 through May 29, 1992.

Support for the claim is based upon a February 20, 1986 Agreement and a Letter of Interpretation dated September 9, 1987, the latter of which reads as follows:

"This refers to our conference of September 9, 1987, in which we discussed the application of that portion of the Memorandum Agreement of February 20, 1986, pertaining to Track Foremen and B&B Foremen participating in work of their forces.

The February 20, 1986 Agreement reads, in part, as follows:

'Foremen will participate in the work of the force to which they are assigned to the extent that this does not conflict with their foreman duties: however, they will continue to have complete control of their force.'

It is not the intent of the foregoing that the Foremen replace Trackmen or B&B Mechanics. They are to only assist in unusual situations or sporadically when needed, it being the intent of the parties that employees assigned Foreman positions will be productive when not otherwise engaged in the performance of their Foreman's duties.

If the foregoing correctly reflects our understanding of this matter will you please indicate below."

The Organization has the burden to prove that the Track Foreman performed Trackman's work in violation of the February 20, 1986 Agreement and its 1987 interpretation. In order to prevail the Organization must present sufficient proof of a violation. On January 14, 1993 the Organization presented a "Statement of Facts" dated December 28, 1992 from the Track Foreman. The Statement shows the Track Foreman was on vacation from May 4 through May 8 inclusive. In the rest of the statement the Foreman relates that while performing Foreman's duties he was also required to perform Trackman's work. The statement is general in nature and does not specify what work was done on the claim dates in this case.

Both parties to the dispute submitted Awards in support of their position. In this particular case a review of the record shows the Organization failed to meet its burden by providing

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sufficient evidence to show a violation of the Agreement. The Foreman's statement, which was submitted some seven months after the alleged violation, is non-specific except for the vacation dates.

AWARD

Claim denied.

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 25th day of April 1996.