

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31558
Docket No. MW-32205
96-3-94-3-635**

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig 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 Carrier violated the Agreement when it assigned Track Subdepartment forces to perform Bridge and Building Subdepartment work (build a bridge) at Mile Post 20 near Robbins, Ohio on the Huntington Division on October 7, 8 and 11, 1993 [System File C-TC-9807/12(94-98) COS].
- (2) As a consequence of the violation referred to in Part (1) above, Claimants G. Bragg, R.D. Hampton, D. Hammond, H.A. Smith and D. Fuller shall each be compensated, at their respective straight time rates, for an equal proportionate share of the seventy-two (72) hours expended by the Track Subdepartment forces in the performance of the work in question."

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.

As best as the Board can ascertain from the record developed on the property, this claim arose because track forces and five B&B employees were utilized to "construct a vehicle access crossing (20' wide x 10' long) over a ditch that had washed out."

The Board finds for the Organization on the basis that the Carrier did not refute the substance of the Organization's position as presented in the Organization's letter of April 15, 1994 to the Carrier.

With respect to damages, there has been no showing on the property that Claimants suffered a loss of earnings. Accordingly, Part 2 of the claim is denied.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is order to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

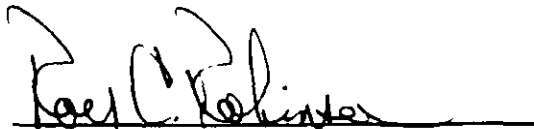
NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of July 1996.

LABOR MEMBER'S CONCURRENCE AND DISSENT
TO
AWARD 31558, DOCKET MW-32205
(Referee Muessig)

The Board correctly found that the Agreement was violated when the Carrier assigned track forces to perform work reserved to its bridge and building forces. We concur with the Majority's findings insofar as the Agreement violation is concerned; however, we are troubled by the referee's failure to compensate the Claimants for their lost work opportunity. We are impelled to point out, as we did in the Concurrence and Dissent to Award 31557, that on this property there exists no fewer than sixteen (16) recently rendered awards wherein this Board has compensated the claimants therein for a lost work opportunity and to protect the integrity of the Agreement in class and craft disputes. The Organization would be negligent not to point out this fact. The referee's failure to award damages in this case is an aberration that is directly contrary to the controlling precedent on this property. Insofar as the remedy is concerned in this case, I respectfully dissent.

Respectfully submitted,


Roy C. Robinson
Labor Member