

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28821
Docket No. MW-28771
91-3-89-3-156

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc.
(formerly The 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 Foremen T. Villiquette and C. Felkey instead of Trackman B. Thompson to clean snow from switches and apply antifreeze solution at Walbridge, Ohio on February 12, 1988 [System File C-TC-4066/12(88-470) CON].

(2) As a consequence of the aforesaid violation, Trackman B. Thompson shall be allowed pay for eight (8) hours at his pro rata rate and seven (7) hours at his time and one-half rate. In addition, he shall be allowed one days' credit towards 1988 vacation qualifying time."

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 employes 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.

This is a companion case to Third Division Award 28820. On February 12, 1988, the Carrier assigned two (2) foremen to clear snow from switches and to apply antifreeze solution at Walbridge, Ohio. The Organization contends the Claimant was fully qualified and readily available to perform the work in question. This Board adopts the findings and reasonings as found in Third Division Award 28820.

We also point out that the Organization also advanced the argument the parties, by Agreement, agreed to limit the work of foremen within the track subdepartment to the extent that they would not be utilized to replace trackmen. The Organization, apparently, refers to a Letter of Interpretation dated September 9, 1987, which applies to a February 20, 1986, Memorandum of Agreement which states in relevant part:

"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."


In this matter, the Organization has presented no evidence that the foremen involved replaced trackmen. On the contrary, the above quoted language expressly states the foremen will participate in the work of the force to the extent it does not conflict with their foreman's duties and that they will have control over their forces. Additionally, the Board finds no basis to conclude the disputed assignment of February 12, 1988, in any manner conflicted with duties of the involved foremen.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1991.

LABOR MEMBER'S DISSENT
TO
AWARD 28820, DOCKET MW-28770
AWARD 28821, DOCKET MW-28771
AND
AWARD 28822, DOCKET MW-28772
(Referee McAllister)

RECEIVED
AUG 12 1991
THIRD DIVISION

Each of these dockets involved the Carrier assigning either blacksmiths, track inspectors or foremen to perform snow cleaning work on February 6, 7, 11, 12, 13 and 15, 1988 at Walbridge, Ohio. Walbridge is located southeast of Toledo, Ohio and is approximately eight (8) miles from the shore of Lake Erie. The average yearly snow fall for this area is approximately forty (40) inches. Since this Carrier has operated through this area for at least one hundred (100) years, it seems that a defense of snow emergency lacks credibility. However, the Majority, in its infinite wisdom, chose to give credibility to Carriers argument and held in Award 28820 that "The Board finds the Carrier established emergency weather conditions prevailed on February 11, 1988. ****" Without conceding an emergency existed for that day, but for the sake of argument that such was the case, how could the Majority then find that the alleged emergency continued on February 12, 1988 (Award 28221) or February 13 (Award 28821) or February 7 following the initial snow fall on February 6 (Award 28822). As Third Division Award 23861 held:

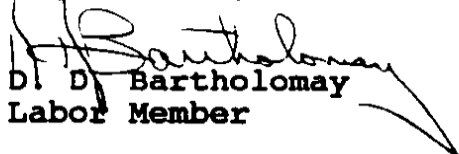
**** The Board will take judicial notice that severe snow storms in this section of the country are not rare. Because of the necessary time involved in implementing the assignment mandated by Rule 6 under these circumstances, the Board will grant that the first day of the

Labor Member's Dissent
Awards 28820, 28821 and 28822
Page Two

"storm would make it practically impossible to assign Claimant to operate the backhoe. However, absent a showing by Carrier that it was not possible for Claimant to travel in a safe and reasonable manner the twenty miles to Madison, Claimant should have been assigned to operate the backhoe. No such showing was made, therefore the Agreement was violated."

These awards are palpably erroneous and I therefore dissent.

Respectfully submitted,


D. D. Bartholomay
Labor Member