

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 Assistant Track Inspector S. Simmons instead of Trackman K. McGee to perform snow cleaning work at Walbridge, Ohio on February 6 and 7, 1988 [System File C-TC-4060/12(88-465) COS].

(2) The Carrier violated the Agreement when it assigned Track Inspector P. Cousino instead of Trackman L. Coberly to clean snow from switches and apply antifreeze solution at Walbridge, Ohio on February 11 and 12, 1988 [System File C-TC-4062/12(88-466)].

(3) The Carrier violated the Agreement when it assigned Track Inspector K. Jazwiecki and Assistant Track Inspector S. Simmons instead of Trackmen L. Coberly and B. Thompson to clean snow from switches and apply antifreeze solution at Walbridge, Ohio on February 12 and 13, 1988 [System File C-TC-4063/12(88-467)].

(4) The Carrier violated the Agreement when it assigned Track Inspector P. Cousino instead of Trackman J. Harrison, III to clean snow from switches and apply antifreeze solution at Walbridge, Ohio on February 12, 1988 [System File C-TC-4064/12(88-468)].

(5) The Carrier violated the Agreement when it assigned Track Inspector P. Cousino and K. Jazwiecki instead of Trackmen K. McGee and J. Harrison, III to clean snow from switches and apply antifreeze solution at Walbridge, Ohio on February 15, 1988 [System File C-TC-4065/12(88-469)].

(6) As a consequence of the violation referred to in Part (1) above, Mr. K. McGee shall be allowed pay for eight (8) hours' at his pro rata rate, eight (8) hours' at his time and one-half rate and eight (8) hours' at his double time rate.

(7) As a consequence of the violation referred to in Part (2) above, Mr. L. Coberly shall be allowed pay for eight (8) hours' at his pro rata rate, eight (8) hours' at his time and one-half rate and eight and one-half (8 1/2) hours' at his double time rate.

(8) As a consequence of the violation referred to in Part (3) above, Messrs. L. Coberly and B. Thompson shall each be allowed pay for eight (8) hours' at their pro rata rate, eight (8) hours' at their time and one-half rate and seven and one-half (7 1/2) hours' at their double time rate. In addition, they shall each be allowed one day's credit for 1988 vacation qualifying purposes.

(9) As a consequence of the violation referred to in Part (4) above, Mr. J. Harrison, III shall be allowed pay for four and one-half (4 1/2) hours' at his time and one-half rate and he shall be allowed one day's credit for 1988 vacation qualifying time.

(10) As a consequence of the violation referred to in Part (5) above, Messrs. K. McGee and J. Harrison, III shall each be allowed pay for six (6) hours' at their time and one-half rate and they shall each be allowed one day's credit for 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.

The Organization's claim contends the Carrier violated the Agreement when, on February 6, 7, 11, 12, 13, and 15, 1988, it assigned various track inspectors and assistant track inspectors to clear snow from switches and to apply antifreeze solution at Walbridge, Ohio. In so acting, the Organization maintains the Carrier violated the Scope Rule of the Agreement and should have, instead, recalled furloughed employees to perform the work.

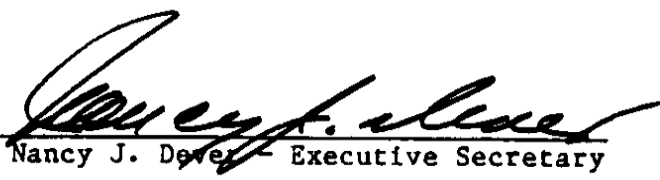
As in Third Division Awards 28820 and 28821, the Carrier responded to the multiple claims of this case asserting that blizzard conditions existed on the dates in question. This Board finds no probative evidence of record which rebuts this contention. Accordingly, we specifically adopt the reasoning and Findings in Third Division Award 28820 which essentially held that given the Carrier's un rebutted contention that in the past and in like weather conditions, it utilized other than trackman forces for snow removal. We find that in these consolidated claims, the Organization has failed to establish the work of clearing snow from switches and the application of antifreeze is exclusively reserved to trackmen when emergency conditions exist.

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)

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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:

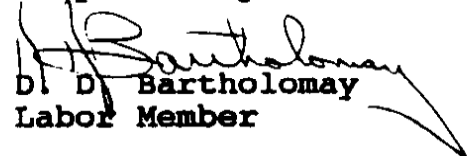
"*** The Board will take judicial notice that severe snow storms in this section of the country are not rare. Because of the necessary time involved in implementing the assignment mandated by Rule 6 under these circumstances, the Board will grant that the first day of the

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"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