

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 failed and refused to assign Mr. L. Bowles to perform foreman inspector work on Bridge 095 at Columbus, Ohio on June 8, 9, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27 and 28, 1988 (System File C-TC-4466/12(88-805 COS).

(2) As a consequence of the aforesaid violation, Mr. L. Bowles shall be allowed one hundred twelve (112) hours of pay at the B&B foreman's rate."

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 employees 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.

On the dates stated in the Claim, the Organization alleges that the Carrier failed to assign the Claimant as a B&B Foreman Inspector in reference to work being performed by outside forces on Bridge 095. The Organization relies on Rule 83-Contract Work, which states in part as follows:

"If the contracted work is bridges and structures work, a B&B foreman will be assigned with the contract force if the job is such as would justify assignment of a foreman if the railway company were doing the work with its own forces."

The Carrier contends that Rule 83 is not applicable in the particular circumstances herein and further argues, in reference to most of the dates,

that no Foreman Inspector was assigned owing to a derailment "emergency." Despite this, the Carrier offered to settle the Claim by payment of the difference between the B&B Foreman's pay rate and that received by the Claimant as a B&B Mechanic for the dates listed in the Claim. The Organization refused to accept this offer, seeking instead full Foreman's pay because of the Carrier's alleged "repeated violations" in similar past instances.


Thus, the Board need only resolve the appropriate remedy. The Board is not empowered to assess punitive damages, even in the face of allegations as to past Carrier practice. The Claimant, however, is entitled to lost pay, as apparently acknowledged by the Carrier's settlement offer. The Claim will be sustained to the extent of the difference between the B&B Foreman pay rate and that actually received by the Claimant.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1991.