

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CSX Transportation, Inc. (formerly The 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 used junior Trackmen J. Bloomfield and/or T. Wisecup to perform trackman duties on Force 6G14 and/or 6G05 instead of Trackman T. J. Goodon who was senior, willing and available to perform such service from April 3, 1989 through May 1, 1989 [System File C-TC-4880/12(89-480) COS].

(2) The Agreement was violated when the Carrier used junior Trackman J. M. VanDalsen to perform trackman duties on regional forces instead of Trackman T. J. Goodon who was senior, willing and available to perform such service from April 3, 1989 through May 1, 1989 [System File C-TC-4837/12(89-526)].

(3) As a consequence of the violations referred to in Part (1) and/or (2) hereof, Trackman T. J. Goodon shall be compensated at his trackman rate of pay for all wage loss suffered."

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 dispute combines two Claims, both of which cover the period from April 3 through May 1, 1989, resulting from Carrier's decision to recall three furloughed trackmen on April 3, 1989. Claimant, a furloughed employee who alleged he was senior to the three, maintained that he was willing and available to do the work and that he had properly notified Carrier of his willingness to

perform temporary work, in accordance with Rule 5(c). The first Claim is for all time spent by J. Bloomfield and/or T. Wisecup on Force 6G14 and/or 6G05 during this period and the second is for all time spent by J.M. VanDalsen on regional forces on the Chicago-Cincinnati seniority district.

Carrier argues, and this Board agrees, that it is improper to make two Claims for the same dates, since both cannot be awarded. One or the other must fail. Central to the resolution of both is the question of whether Claimant did in fact properly notify Carrier of his interest in working temporary positions. Rule 5(c) mandates that "where cut-off employees desire to be used to perform temporary or extra work, they will notify the Manager-Engineering or other corresponding supervisory officer in writing accordingly." As pointed out by the Organization, this is done by checking a box at the bottom of the form with the cut-off notice that reads "I desire to protect extra work during period of furlough."

Carrier maintained throughout the handling of this Claim on the property that Claimant had called the Division Engineer's office to say that he did not want to work on a regional force unless awarded a permanent position. Claimant and the Organization denied this assertion.

Ultimately, the issue of whether Claimant ever orally informed the Division Engineer that he was not interested in a temporary position is immaterial. Rule 5(c) of the Agreement requires that a cut-off employee notify the Manager-Engineering of a desire to be used for this purpose. That interest must be conveyed in writing. For a Claim of this nature to be sustained, there must first be clear evidence in the record that a written notice was filed.

A complete review of the record, however, reveals no such notice. Thus, it is not possible for this Board to determine whether the Claimant has any standing in either Claim.

Under the circumstances, in keeping with our position in numerous cases before us, where a basic fact is in dispute and there is no evidence put forth to reconcile the conflict, we have no alternative but to dismiss the Claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January 1992.