

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29189
Docket No. MW-28664
92-3-89-3-15

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers 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 Agreement was violated when the Carrier assigned Foremen S. Walters and B. Osborne to perform trackmen's work (installing switch ties) between Mile Posts 17 and 18 on the Sandy Valley Subdivision from November 9 through 13, 1987 [System File C-TC-2565/12(88-175)].

(2) As a consequence of the aforesaid violation, Trackmen R. L. Burns and J. Burchett shall each be allowed five (5) days of pay at their applicable straight time rates."

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.

Claimants hold seniority as trackmen on the Sandy Valley Subdivision for CSX Transportation, Inc. As a result of a job reduction, the Claimants were furloughed from Carrier's service. Claimants filed their names and addresses with the Carrier in accordance with Rule 5(a) and (c) which reads in part as follows:

"(a) When employees displaced or laid off by reason of force reductions do not stand to work in any class and desire to retain seniority, they must file their name and address in writing not later than ten days from date they are cut off....

(c) When permanent vacancies or new positions are not filled by employees already in the service, cut-off men will be recalled to fill such positions in accordance with their seniority..... 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. Men requesting temporary or extra work which may arise, will be recalled according to seniority, but if the senior man is not available at the time the work arises, any man available may be used until the senior man is available...."

On November 9 through 13, 1987, a Foreman and three Trackmen were assigned duties of installing switch ties at Dorton, Kentucky, between Mileposts 17 and 18 on the Sandy Valley Subdivision. The installation of switch ties has been customarily and traditionally performed by trackmen.

On November 30, 1987, the Organization filed a Claim on behalf of the furloughed Claimants requesting payment for "five (5) days each at the applicable rate that they would have been afforded if they had been allowed to do their duty as a trackmen." The letter further requested the Carrier to "stop violating the Foremens agreement" everytime a Foreman is used to displace a trackman.

This Board has reviewed the record in this case, and we find that the Organization has not met its burden of proof that any contract violation occurred on the date in question.

The record reveals that the Claimants had been furloughed as a result of business conditions and were not furloughed because a Foreman was being used as a replacement. Moreover, the record reveals that there was no work that was available for the furloughed employees.

This Board finds that the available work force was used along with the Foreman. The Carrier has a right to have its Foremen perform some of the work at issue under the Agreement of February 26, 1986 and letter of clarification which was written to so provide in return for increasing the compensation of Foremen.

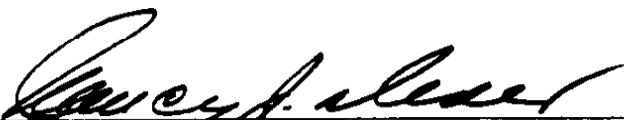
In order to prevail in cases of this kind, the Organization must present sufficient proof of a violation of the Agreement. In this case, there is insufficient proof that the Foreman in question who was performing trackman work was doing so in violation of the Agreement. Therefore, the Claim will be denied.

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 3rd day of April 1992.