

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29730
Docket No. MW-29464
93-3-90-3-391

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 Agreement was violated when the Carrier assigned junior employee J. R. Myers instead of A. K. McKee to work on Force 6G14 during April and May, 1989 [System Files C-TC-4900 and C-TC-4906/12(89-721) COS].
- (2) Mr. A. K. McKee shall be compensated for all wage loss suffered and receive appropriate vacation qualifying credits as a consequence of the aforesaid violation."

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 employe 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 Claimant is a Trackman who was in furlough status, as was a junior Trackman. In April-May 1989, the junior Trackman was assigned to fill a temporary position pending bulletin and assignment of the position.

Rule 5(c) reads in pertinent part as follows:

"When 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."

The Organization notes that the "accepted and recognized procedure" for requesting temporary work under Rule 5(c) is to check within the cut-off notice a box which states:

"I DESIRE TO PROTECT EXTRA WORK DURING PERIOD OF FURLOUGH."

The Organization states without contradiction that the Claimant completed such request notice on his cut-off form and that he was available for the temporary assignment.

The Carrier, in contrast, refers to an alleged established practice under which temporary work on regional gangs, as involved herein, is awarded to employees specifically requesting such regional gang assignment. The Carrier repeatedly contends that "there is no provision of the controlling Agreement which prohibits" this procedure. The difficulty here is that the Carrier refers to and quotes in its submission a different Rule 5 which is inapplicable to this Organization.

Quite simply, the applicable Rule 5(c) concerns specifically the assignment of temporary work, without exception. The Claimant met the requirement thereof. A practice to the contrary (the controlling existence of which the Organization denies) cannot stand in the face of the clear and encompassing Agreement provision.

The Claim will be sustained from April 17, 1989 (60 days prior to the Claim date) until the junior Trackman completed his temporary service (apparently, on or about the beginning of May 1989).

Form 1
Page 3

Award No. 29730
Docket No. MW-29464
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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
Nancy J. Dever - Secretary to the Board

Dated at Chicago, Illinois, this 12th day of August 1993.