

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29974
Docket No. MW-30128
93-3-91-3-562

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 Employes
(CSX Transportation, Inc. (formerly Western
(Maryland Railway Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned a junior employee to fill a temporary Class B Machine Operator vacancy on the Patch Rail Gang at Cheat Bridge and Linan Mine, West Virginia, beginning on June 11, 1990 instead of recalling and assigning Class B Machine Operator H. K. Watson [Carrier's File 12(90-896) WMR].
- (2) As a consequence of the aforesaid violation, Class B Machine Operator H. K. Watson shall be allowed eight (8) hours' pay per day and shall be allowed vacation credit for the months of June and July, 1990."

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.

This Claim was filed on July 19, 1990, alleging the Carrier violated the Scope Rule and Rule 18 when it recalled a junior employee to fill "a position in patch rail gang..." The claim

asserted the Carrier failed to advertise the position (Class B Operator) and further maintained the employee assigned was junior to the Claimant.

The Carrier argues the record does not support the Organization's contention that the Scope Rule and Rule 18 of the controlling Agreement were violated. It is evident the Scope Rule defines the application of the Agreement to represented employees. The work in question was performed by employees represented by the Organization; therefore, the facts do not demonstrate a Scope Rule violation occurred.

Rule 18 states in pertinent part:

"Temporary vacancies of thirty (30) days or less duration need not be bulletined. New positions or vacancies may be filled temporarily pending assignment by bulletin."

The Board has analyzed the on-the-property record and is forced to conclude the Organization's assertions of a Rule 18 violation are not supported by fact. This case was advanced solely upon the claimed violation of the Scope Rule and Rule 18. In its Submission, the Organization raised other alleged Rule violations, which this Board is not free to consider. In the absence of proof that the Scope Rule or Rule 18 was violated, the Board is required to deny the claim given the Organization's inability to meet its burden of proof.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine M. Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of December 1993.