Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30606
Docket No. MW-30267
94-3-91-3-745

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CSX Transportation, Inc. (former Seaboard
(Coastline Railroad Company)

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

(1) The Agreement was violated when, from November 5 through 20, 1990, the Carrier assigned former L&N Railroad Force A583 to surface track at Howell Yard in Atlanta, Georgia. [System File MA-91-02/12(91-170)SSY].

(2) As a consequence of the violation referred to in Part (1) above, Machine Operators M. Alexander, Calvin Clemons, Calvin Heard and George Williams shall each be allowed $1,558.80 and Trackman R. W. Woody shall be allowed $1,417.20."

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 employee 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.

It undisputed on the record that from November 5 through November 20, 1990, Carrier utilized employees of the L&N Railroad Company to perform track surfacing at Carrier's Howell Yard, in Atlanta, Georgia. By letter of January 2, 1991 (erroneously dated as 1990 in the actual correspondence), the Organization filed a claim alleging that Carrier had violated the current working Agreement and requested a total of 700 hours' pay to be distributed among the five named Claimants.

In its denial of that claim on January 11, 1991, Carrier did not dispute the Organization's contention that the work at issue had been performed by employees lacking seniority in the district encompassing Howell Yard. Rather, the Carrier's sole basis for denying the claim was that all M of W employees listed were working at the time, and, therefore, were not monetarily injured.

In addition to the foregoing denial, during processing on the property, Carrier also maintained that the claim as presented was "excessive and vague, with no specific dates cited...." A careful review of the correspondence between the parties fails to support the Carrier's procedural objection. The claim as presented is specific with respect to the work done, the parties performing the work, and the dates at issue.

With respect to the merits of this case, there is no question that the work in question was performed by other than M of W employees. Since the Carrier does not refute the Organization's statement concerning reservation of the work to M of W employees, the Organization has met its initial burden of persuasion. Notwithstanding, of the five employees listed as Claimants, the Organization has demonstrated only that two of the Claimants, Woody and Williams, were financially disadvantaged by the Carrier's actions. There is no evidence on this record to support a punitive award of monetary damages to all Claimants. Accordingly, Claimant Woody shall receive payment of $236.20, and Claimant Williams shall receive payment of $73.35 (the difference between what Carrier has shown they actually earned during the period in question and the amount claimed in the Organization's initial claim letter).

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 2nd day of December 1994.

LABOR MEMBER'S
CONCURRING OPINION AND DISSENT
TO
AWARD 30606, DOCKET MW-30267
(Referee Wesman)

The Majority correctly found that the Carrier violated the Agreement when it assigned employes of the L&N Railroad Company to perform work on the Claimants' seniority district. This finding was not difficult inasmuch as the Carrier freely admitted the violation. However, the Majority's finding that the monetary remedy therefor should be limited conflicts with a long line of awards of this Board which allowed monetary damages when seniority district rules were violated and with established precedent on this property.

This Board has recognized in innumerable awards the value of well-reasoned precedent, not only in settling the immediate cases brought before it, but also to fulfill the purposes of the Railway Labor Act to effect the prompt and orderly settlement of disputes by settling issues between the parties with some degree of finality. For example, in Award 14508 this Division held:

> "*** Although we retain the authority to reverse prior awards of this Board. We find no justification for doing so in this case. Our reasoning is the same as that expressed by Refree (sic) Dorsey in Award No. 11788:
>
> > 'We have no hesitation or compunction in reversing prior Awards when we are convinced they are palpably wrong. But, we cannot and do not lightly regard precedent Awards; for, if we did so, it would not engender the prompt and orderly settlement of disputes on the property within the contemplation of Section 2 (4) and (5) of The Railway Labor Act, * * * Only if in law and in fact a prior Award finds no support should we reverse it. Certainly, where a provision of an Agreement permits more than one

> "'interpretation, we must presume that the Division, in its deliberations, considered all of them before making its selective determination. We should not at a later date, with a different referee participating, substitute our judgment for that in a precedent Award unless we are unequivocally convinced and can find that the prior judgment is without support. To apply any other test would be to foster uncertainty in the Employe-Carrier relationships in derogation of the objectives of the Act.'"

In Awards 28524 and 29353, this Division considered disputes under this Agreement wherein this Carrier assigned employes across established seniority district lines. In fact, Award 28524 involved the assignment of an employe of the former L&N Railroad to perform work on the Atlanta Division Seniority District, exactly the situation involved here. In those awards, the Board decided that because of the Carrier's violation of the seniority district rules, the claimants were due full compensation, notwithstanding their so-called "fully employed" status, citing Third Division Awards 14004, 17051 and 25964 as precedent. Absent a finding that the above-cited awards were palpably wrong, the Board should have applied the principle of stare decisis and sustained the claim in full. Inasmuch as the Majority in this case failed to address the precedent awards, much less find them palpably wrong, this award is, itself, palpably erroneous and without value as precedent.

Respectfully submitted,

G. L. Hart
Labor Member