

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31188
Docket No. MW-30914
95-3-92-3-803

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(CSX Transportation, Inc. (former
(Western Maryland Railway Company)

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

- (1) The Agreement was violated when the Carrier abolished the trackman position at Cheat Bridge and thereafter assigned a foreman and chauffeur to perform trackman's work (placing ties, surfacing track, changing bars, replacing bolts, etc.) beginning October 29, 1990 [Carrier's File 12(91-168) WMR].
- (2) As a consequence of the violation referred to in Part (1) above, furloughed Trackman R. W. Wilfong shall be allowed pay for all hours worked at his respective straight time and time and one-half rates of pay, beginning October 29, 1990 and continuing, and he shall receive credit for vacation and other benefits in connection therewith."

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.

The Organization argues that the Carrier violated the Scope of the Agreement when, after abolishing the Claimant's Trackman position, it permitted the remaining crew of Foreman and Chauffeur to do Trackman's work. Specific to its argument, the Organization maintains that after abolishment, the two remaining employees performed Trackman work on a daily basis; spot tamping, cleaning culverts, changing bars, replacing bolts, replacing rails and ties.

The Carrier denied Agreement violation pointing out that it complied with Rule 3(f) in furloughing the Claimant as the junior employee. Since the employee assigned to the Chauffeur's position was doing work permitted under the Memorandum Agreement there was no violation.

The Organization has not proven its case with the evidence at bar. The Carrier introduced the Memorandum of Agreement effective November 15, 1970 in arguing that Chauffeurs could perform the disputed work. Section 2 clearly states in clear reference to Chauffeurs that they "... may perform work in the gang... when the vehicle to which assigned is not in use." A full reading indicates clear Agreement language applicable herein.

The Board finds no evidence of probative value to support the Organization's claim. The applicability of the Memorandum of Agreement is not refuted. The Organization's emphasis on Award 5 of Special Board of Adjustment No. 1016 is not on point, as it involved the use of Machine Operators performing Trackman's work over which the Memorandum of Agreement was not applicable. As for the settlement offer, it holds no weight before this Board, as it has long been recognized as non prejudicial to either party in attempts at grievance resolution. Accordingly, this Board's review of the evidence fails to find that the Organization's burden has been met. There is clear Agreement language with a lack of proof that the Carrier violated its directive. The claim must be denied.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of September 1995.