

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31324
Docket No. MW-30306
96-3-92-3-34

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. (former 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 Foreman P. Hamilton to perform eight (8) overtime hours of trackman's work (clean and adjust switches) at Russell, Kentucky on November 3, 1990, instead of calling and assigning Trackman W. Greer to perform said work [System File C-TC-7215\ 12(91-226) COS].
- (2) As a consequence of the aforesaid violation, Mr. W. Greer shall be allowed eight (8) hours of pay at the trackman's time and one-half rate."

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.

On Saturday, November 3, 1990, a Section Foreman was at work on one of his five regularly assigned days. The Trackman assigned to him, working on the same schedule, was on vacation for the day. During the day, the Section Foreman performed certain duties all or most of which would otherwise have been performed by the Trackman.

The Section Foreman's statement as to the events of the day is as follows:

"On November 3, 1990, while working my regular 8 hr shift, I cleaned switches at the Big 4 Russell Ky. Some of the switches I cleaned were the x-over switches from 2-3 lead and the switch at the east end of 3 east bound. I also worked on the switch at Dupont Chemical on the main line. The Trackman who worked on force 6GL4 was off that day. No other Trackman was called to work with me that day."

The Claimant herein is a Trackman in another Gang who contends that, based on his seniority, he should have been called to replace the Trackman on vacation. Saturday was the Claimant's rest day, and he was qualified and available to be called.

The question as to the degree that Foremen may perform the work of the crew they direct has been reviewed in recent Awards involving the same parties. All are concerned with the Letter of Agreement between the parties, as amended September 9, 1987 and reading as follows:

"This refers to our conference of September 9, 1987, in which we discussed the application of that portion of the Memorandum Agreement of February 20, 1986, pertaining to Track Foremen and B&B Foremen participating in the work of their forces.

The February 20, 1986 Agreement reads, in part, as follows:

'Foremen will participate in the work of the force to which they are assigned to the extent that this does not conflict with their foreman duties; however, they will continue to have complete control of their force.'

It is not the intent of the foregoing that the Foremen replace Trackmen or B&B Mechanics. They are to only assist in unusual situations or sporadically when needed, it being the intent of the parties that employees assigned Foreman positions will be productive when not otherwise engaged in the performance of their Foreman's duties."

Third Division Sustaining Award 28684 considered a situation in which the Organization contended that a Track Foreman had been performing Laborer work for a continuous period of more than two months. Third Division Award 29004 concerns a Foreman performing Trackman work for eight hours on five consecutive days. The Claimant was a furloughed Trackman. The Board found that 40 hours' work involved no "unusual situations" and was more than "sporadically". The claim was sustained.

Third Division Denial Award 29189 involved a claim of two Trackmen who had previously been furloughed "for business reasons." The claim was that the Foreman had worked with three remaining Trackmen for five days. The Board found the Foreman was not being used "as a replacement" for the earlier furloughed Trackmen and that, under the Agreement quoted above, "the Carrier has a right to have its Foreman perform some of the work at issue." Third Division Denial Award 31002 was also on behalf of a furloughed Trackman and involved the same Foreman as in Third Division Award 28684. The claim stated the Foreman worked with a Laborer on three separate occasions. The Board concluded:

"... there is no support here for the contention that the Claimant should have been recalled from layoff for these separate brief periods. In other words, here the requirement to 'participate in the work' and to 'be productive' is the more accurate description of what occurred."

In the matter here under review, this is the only instance in which, for a short period, the Foreman worked alone, in the absence of the one Trackman assigned to him. Nevertheless, the Board finds the situation here closest to that covered in Award 31002. The Foreman's statement admits to doing more than "four" switch tasks, although the Organization's contention that he was involved in Trackman's work for eight hours is not proven. The Carrier's suggestion that the Foreman worked only on "emergency" matters is clearly without proof. However, the regularly assigned Trackman was on vacation for the day, and the Carrier contends that vacation replacements of this nature are not usually made. Further, the Foreman was on his regular schedule, and this was not a "call in." In the Board's view, this fits the definition of "sporadic" work which is called for in the above-quoted Agreement.

AWARD

Claim denied.

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 25th day of January 1996.