

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Form 1

Award No. 31480
Docket No. MW-31361
96-3-93-3-374

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(CSX Transportation, Company (former
(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 or otherwise permitted Track Foreman J. Bell to perform trackman's work while assigned on Force 5GB2 at New Port News, Virginia from February 1 through 28, 1992, instead of recalling and assigning furloughed Trackman J. Chamblee to perform said work [System File C-TC-5323/12 (92-722) COS].
- (2) The Agreement was violated when the Carrier assigned or otherwise permitted Track Foreman J. Bell to perform trackman's work while assigned on Force 5GB2 at New Port News, Virginia beginning March 6, 1992 and continuing, instead of recalling and assigning furloughed Trackman J. Silver to perform said work [System File C-TC-5352/12 (92-871)].
- (3) As a consequence of the violation referred to in Part (1) above, Mr. J. Chamblee shall be compensated for eight (8) hours per day at the trackman's straight time rate plus any overtime at the trackman's time and one-half rate for the total number of man-hours expended by Foreman Bell in performing the trackman's work from February 1 through 28, 1992.
- (4) As a consequence of the violation referred to in Part (2) above, Mr. J. Silver shall be compensated for eight (8) hours per day at the trackman's straight time rate plus any overtime at the trackman's time and one-half rate for the total number of man-hours expended by Foreman Bell in performing the trackman's work beginning March 6, 1992 and continuing until the violation ceases."

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 is the position of the Organization that Carrier utilized a Foreman as a Trackman while Trackmen were furloughed.

At the core of this dispute is the February 20, 1986 Agreement wherein the parties agreed in Item 2 thereof that:

"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."

and a side letter dated September 9, 1987, which is an agreed upon interpretation of Item 2 quoted supra.

The Carrier's position is that the Foreman's services were utilized in accordance with the February 20, 1986 Agreement.

There is no evidence in the on-property handling that the Foreman's assignment did in any way conflict with his Foreman's duties, nor is there any evidence that the utilization of the Foreman in this dispute was anything other than sporadic. In fact, the side letter further states:

"...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."

As the Board found in Third Division Award 29189:

"...there is insufficient proof that the Foreman in question who was performing trackman work was doing so in violation of the Agreement...."

This Board also so finds.

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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 23rd day of May 1996.