

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32513
Docket No. MW-31530
98-3-93-3-527

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(CSX Transportation, Inc. (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 outside forces (Altair Restoration Systems) to perform bridge repair work between Broad Street and Marshall Street in Richmond, Virginia beginning June 1, 1992 and continuing [System File C-TC-5002/12(92-1024) COS].
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intention to contract out the work described in Part (1) above.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed B&B Mechanic M. Reed shall be compensated for eight (8) hours' pay per day, five (5) days per week, at the B&B mechanic's straight time rate of pay and he shall be compensated at the time and one-half rate of pay for all hours worked outside the regular assigned hours by the outside forces beginning June 1, 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 were given due notice of hearing thereon.

This case involves a claim on behalf of Claimant, furloughed B&B Mechanic, M. Reed, covering the period June 1, 1992 through August 17, 1992 regarding work performed by outside forces to perform bridge repair work between Broad Street and Marshall Street in Richmond, Virginia. The Organization claims that the record demonstrates that the work was covered work that has historically been performed by Organization employees. It also claims that it is undisputed that Carrier failed to recall the Claimant to perform the work in question. For this reason, the Organization insists that the claim should be sustained regarding compensation for Claimant.

Carrier, on the other hand, disputes several aspects of the original Organization claim. First, it disputes the Organization's assertion that Carrier failed to furnish the General Chairman with advance written notification of its intention to contract the work in question. It notes that by letter dated April 14, 1992 Director of Employee Relations J. B. Allred informed General Chairman J. R. Cook of the necessity of contract with Altair Restoration Systems to perform the repairs to the bridge in question. In this letter, Allred stated that the work would begin on or about May 5 and would be completed on or about June 26, 1992. Given this letter, Carrier insists that the Organization's claim, insofar that it asserts a violation for the failure to provide advance notice, must fail.

As to the specific claim regarding Claimant, Carrier asserts that Claimant had previously requested that the Carrier not call him back from his furloughed status because he had other employment that was occupying him. In light of this fact, Carrier insists that it was logical to believe that Claimant was unavailable to perform the work that was being contracted out. For this reason, Carrier maintains that the claim must be denied.

After review of the evidence and arguments presented, we must sustain the claim as presented insofar as it seeks compensation for Claimant for the period June 1, 1992

through August 17, 1992. While it is true that Claimant had previously turned down a two week vacation work opportunity offered to him approximately two years before this work arose, we cannot view that declination as broad enough for Carrier to be relieved of its obligation to offer this furloughed employee new work opportunities. Frankly, the rejection in question cannot be viewed as a blanket rejection of all future work. After all, that specific rejection was placed in writing by Claimant only for a two week vacation period that he was about to undertake. That declination alone is insufficient to relieve Carrier of the obligation to recall a furloughed employee when work arises like the type of work in dispute here.

Moreover, we disagree with Carrier's initial declination of the claim submitted on behalf of Claimant. The evidence is overwhelming that at the time in question Claimant was, in fact, a furloughed employee.

As such, we will sustain the claim for the period June 1, 1992 through August 17, 1992. In all other aspects, the Organization's claim is denied.

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 25th day of March 1998.