

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33638
Docket No. MW-32446
99-3-95-3-340**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Baltimore and Ohio
(Chicago Terminal Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned Track Welders E. R. Gamboa and E. H. Gamboa to perform track repairman's work of removing snow from switches near Mile Post 13.0 at Barr Yard on February 22 and 23, 1994 and when three (3) Bridge and Building (B&B) carpenters performed track repairman's work of removing snow from switches at Barr Yard on February 26, 1994 [System file 1 (8) (94)/ 12 (94-0481) BOC].

(2) As a consequence of the violation referred to in Part (1) above, furloughed Track Repairmen R. T. Arroyo and E. A. Arroyo shall each be allowed eleven (11) hours' pay at their time and one-half rates for the time expended by the Welding Subdepartment employees performing Track Subdepartment duties on February 22, 1994 and fifteen (15) hours' pay at their time and one-half rates for the time expended by the Welding Subdepartment employees performing Track Subdepartment duties on February 23, 1994, and furloughed Track Repairmen R. T. Arroyo, E. A. Arroyo and D. Herrera shall each be allowed eight (8) hours' pay at their time and one-half rates for the time expended by the three (3) B&B Subdepartment employees performing Track Subdepartment duties on February 26, 1994.”

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.

On February 22, 23 and 26, 1994 there were snow storms in Chicago, Illinois. In order to keep its Barr Yard operating the Carrier assigned numerous employees to assist with snow removal in the yard. Two Track Welders plowed snow with their truck and swept snow off switches on February 22 and 23, 1994. On February 26, 1994, three Bridge and Building (B&B) Carpenters assisted with snow removal in Barr Yard.

On April 4, 1994, the Organization filed a claim on behalf of three furloughed Trackmen in the Track Subdepartment who, the Organization contends, should have been recalled to perform snow removal on February 22, 23 and 26, 1994. The Organization maintains that clearing tracks and switches of snow is Trackmen's work. According to the Organization, the Claimants were qualified and available to perform the snow removal assigned to Track Welders and B&B Carpenters and would have performed this work had they been recalled.

The Carrier denied the claim contending that the extremely heavy snow that fell in Chicago on February 22, 23 and 26, 1994 created an emergency in Barr Yard. Because of this emergency, the Carrier utilized all available personnel to clear the yard of snow. Moreover, according to the Carrier, it would have been impractical to recall furloughed employees to assist with this snow removal because they would have to be medically qualified before they could be returned to service.

Under Rule 4 on the former Baltimore and Ohio Chicago Terminal Railroad Company the seniority of Maintenance of Way employees is confined to groups and classes within such groups. Trackmen, such as the Claimants, are in Group 4 (b). Rule 44, the Classification of Work Rule on the former B&OCT territory, provides that maintenance of the roadway and track will be performed by employees holding seniority in classes (a), (b) and (f) of Group 4.

In accordance with Rule 4 and Rule 44, the Board finds that Trackmen had the contractual right to remove snow from tracks and switches in Barr Yard on February

22, 23 and 26, 1994. The Board recognizes that in an emergency management has wide latitude to carry out its mission. This would include the right to assign available personnel to clear a yard of snow in order to keep the yard operating.

Notwithstanding this broad discretion granted the Carrier during the February 22-26, 1994 snow fall in Chicago, it should have made an effort to recall the Claimants to perform work reserved to Trackmen by Rule 44. There is no evidence that any effort was made to call them for snow removal in Barr Yard on February 22, 23 or 26, 1994. The Carrier has not demonstrated that the Claimants would have required medical examinations before being recalled for this temporary service. Therefore, a reasonable effort should have been made to recall them from furlough.

Inasmuch as the Carrier made no effort to recall the Claimants to perform work reserved to Trackmen by Rule 44 they are entitled to compensation for the earnings they lost on February 22, 23 and 26, 1994. However, they are entitled to compensation only at the straight time rate of pay because this is what they would have earned on these days had they been called for service.

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 16th day of November 1999.