

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34198
Docket No. MW-32522
00-3-95-3-419**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned outside forces (D. Paul Hamel, Inc. Company) to perform track maintenance work (dismantle track, move materials, reconfigure the yard, etc.) in the Ridgely Yard and Knob Mt., Ridgely, West Virginia, beginning July 5 through 11, 1993, instead of assigning furloughed employes C. L. Hillard, J. E. Hall, G. A. Harbaugh, T. L. Lynch, R. D. Mackereth, R. S. Palmer, R. L. Smith, G. Burger, B. M. Myers, T. R. Davis, W. F. Gaither and J. S. Widmaier to perform said work (WMR).**
- (2) The Carrier violated the Agreement when it assigned outside forces (D. Paul Hamel, Inc. Company) to perform track maintenance work (dismantle track, move materials, reconfigure the yard, etc.) in the Ridgely Yard and Knob Mt., Ridgely, West Virginia, beginning July 12 through August 31, 1993, instead of assigning furloughed employes C. L. Hilliard, J. E. Hall, G. A. Harbaugh, T. L. Lynch, R. D. Mackreth, R. S. Palmer, R. L. Smith, G. Burger, B. M. Myers, T. R. Davis, W. F. Gaither and J. S. Widmaier to perform said work.**
- (3) The claims referenced in Parts (1) and (2) above as presented by Vice Chairman R. L. Caldwell on September 10, 1993 to Division**

Engineer M. D. Ramsey shall be allowed as presented because said claims were not disallowed by him in accordance with Rule 16(a).

- (4) As a consequence of the violations referred to in Parts (1) and/or (3) above, furloughed employes C. L. Hillard, J. E. Hall, G. A. Harbaugh, T. L. Lynch, R. D. Mackereth, R. S. Palmer, R. L. Smith, G. Burger, B. M. Myers, T. R. Davis, W. F. Gaither and J. S. Widmaier shall each be allowed eighty-four (84) hours' pay at their respective rates and they shall receive proper credit for vacation and railroad retirement purposes.
- (5) As a consequence of the violations referred to in Parts (2) and/or (3) above, furloughed employes C. L. Hillard, J. E. Hall, G. A. Harbaugh, T. L. Lynch, R. D. Mackereth, R. S. Palmer, R. L. Smith, G. Burger, B. M. Myers, T. R. Davis, W. F. Gaither and J. S. Widmaier shall each be allowed six hundred twelve (612) hours' pay at their respective rates and they shall receive proper credit for vacation and railroad retirement purposes."

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 is yet another of the disputes arising out of the November 7, 1994 claims conference.

By letters dated September 10, 1993 sent by certified mail, the Organization filed these claims on the Claimants' behalf seeking 84 hours pay and 612 hours pay per employee at the rate earned prior to furlough including credit for vacation and retirement on the basis that during July 5 - August 31, 1993, the Carrier used an outside contractor to perform track maintenance work at Ridgely Yard and Knob Mt. in Ridgely, West Virginia, on WMR property.

By letter dated November 7, 1994, the Organization listed claims for a conference on November 17, 1994 and further stated "[i]n addition we have a number of claims for which we have no response from the first level claim officer" and that "[t]hese claims are also being appealed to you as a default issue and for discussion at our November 17, 1994 conference." These claims were listed as part of those allegedly unanswered claims.

A claims conference was then held on November 17, 1994.

During the processing of the dispute on the property, the Carrier produced copies of two unsigned letters from the Carrier's Division Engineer dated November 5, 1993 declining the claims stating that the July 5 - 11, 1993 dates were out of the time limits in Rule 16 and that, for the remaining dates, disputed the furloughed status of various Claimants for differing time periods in the claims. The Carrier further asserted that the contractor in charge of the dismantling was B. Sykes, Ltd. with a contract fully executed with the Carrier for the removal of rail and ties on the WMR territory between Ridgely and Knob Mount.

Relying upon Rule 16, each side asserted that the other's processing of the claim was untimely. The Carrier also asserted laches as a defense.

The question of whether the Carrier timely responded to various claims discussed at the parties' November 17, 1994 claims conference has been decided favorably to the Organization in three prior Awards between the parties. Third Division Awards 33417, 33452 and 33623. As discussed in detail in Third Division Award 34195 issued this date, those Awards are not palpably in error and, for purpose of stability, must be followed. Those prior Awards and Third Division Award 34195 therefore govern the questions presented in this case.

Given the three prior Awards that have ruled in the Organization's favor on the underlying dispute arising out of the November 17, 1994 claims conference concerning whether the Carrier demonstrated that it denied the claims in a timely fashion, the Board simply has no choice and must adopt the rationale of those decisions because although those prior decisions may be debatable, they are not palpably in error. See Third Division Award 34195. Once again, no matter how the Board with this sitting neutral may feel about the arguments if presented on a de novo basis, under authority of those prior Awards, we are compelled to find that the Carrier has not sufficiently demonstrated that it timely responded to the claims. At best, those prior Awards are debatable. However, to rule differently when the prior Awards are not palpably in error would be an invitation to chaos. Therefore, under Rule 16.1(a), the claims "shall be allowed as presented."

AWARD

Claim sustained.

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 23rd day of August, 2000.