

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35001
Docket No. MW-31091
00-3-93-3-57**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Foreman D. M. Murdock to perform trackman’s work (driving spikes, knocking on anchors, getting down ties and drilling and installing crossing timbers) on the West Virginia Secondary (between Mile Post 202 and Mile Post 149 and between Mile Post 5 and Mile Post 0) from April 2, 1991 to June 20, 1991, instead of recalling and assigning furloughed Trackman L. M. Barker to perform said work (System Docket MW-2272).**
- (2) As a consequence of the violation referred to in Part (1) above, Trackman L. M. Barker shall be allowed pay for an equal amount of man-hours expended by Foreman Murdock in the performance of said work during the period cited.”**

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 by the Organization that the Carrier violated Rules 1 and 3 of the Agreement when it assigned a Track Foreman on CAT Gang SM-610 to perform Trackman's work while the Claimant, a Trackman, remained furloughed. In support of the claim, the Organization presented the Foreman's un rebutted, signed statement acknowledging that he performed the disputed work throughout the claim period.

Under Rules 1 and 3, the Organization argues, seniority is established and maintained separately for Trackmen and for Foremen. The Organization, accordingly, asserts that the assignment of work belonging to employees holding seniority in the Track Subdepartment to an employee who does not hold such seniority violated the Agreement. The Organization disputes the Carrier's claim that Rule 19 and paragraph 4 of the Scope Rule permitted the disputed assignment.¹ It argues that the Carrier's expansive reading of those provisions would destroy the Agreement's seniority protections.

The Carrier, on the other hand, asserts that the record evidence documents only incidental Trackman activity by the Foreman. According to the Carrier, such work, particularly because it was temporary, was permitted under Rule 19 and the fourth paragraph of the Scope Rule. The Carrier insists that the Rules, which are meant to

¹ Rule 19 reads, in pertinent part as follows:

"RULE 19 - ASSIGNMENT TO HIGHER OR LOWER RATED POSITIONS

An employee may be temporarily assigned to different classes of work within the range of his ability. . . . If assigned to a lower rated position, he will be paid the rate of his regular position.

The fourth paragraph of the Scope Rule states, in relevant part:

This listing of a given classification is not intended to assign work exclusively to that classification. It is understood that employees of the one classification may perform work of another classification subject to the terms of this Agreement."

give it flexibility in the assignment of work in order to bring greater efficiency to its operations, were not violated.

According to the Carrier, work assignments under Rule 19 and paragraph 4 of the Scope Rule are not exclusive to any single classification, and employees in one classification may perform the work of another. So, too, Rule 1 expressly provides that the Track Foreman's job is to "[d]irect and work with employees assigned under his jurisdiction." (Emphasis supplied). Relying on these provisions, the Carrier insists that the Agreement expressly allowed the Foreman to perform Trackman work. There is no requirement, according to the Carrier, that a furloughed employee be recalled to do work that a Foreman already on duty is available and permitted to perform as an incidental part of his job.

In any case, the Carrier argues, the claim must be dismissed because the case presented to the Board is different from the claim handled on the property. Further, according to the Carrier, because the claim was not filed within 60 days of the first 13 alleged violations, those alleged violations may not be considered by the Board. With respect to remedy, the Carrier claims that because the Claimant was furloughed, he was not available for service, suffered no loss and is not entitled to compensation.

Based on its review of the record evidence, the Board finds that the Carrier substituted a Foreman for a Trackman on Gang CAT SM-610 during the period April 2 to June 20, 1991, thereby violating Rules 1 and 3 of the Agreement. The evidence simply does not support the Carrier's assertion that the Trackman work performed by the Foreman was incidental to his regular duties. Rather, evidence demonstrates that the Trackman work performed by the Foreman was a regular and substantial part of his work assignment during the period covered by the claim. We do not believe that Rule 19 or paragraph 4 of the Scope Rule were intended to permit the kind and degree of work reassignment which occurred in this case.

We do not agree with the Carrier that the claim presented to the Board is different from the one handled on the property. Nor are we persuaded, under these facts, that a furloughed Trackman is precluded from obtaining the make whole remedy sought by the claim. However, any violations which are alleged to have occurred more than 60 days before June 26, 1991, cannot be considered by the Board, and are 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 20th day of September, 2000.