

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37300
Docket No. MW-36961
04-3-01-3-606

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 Employees
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to call and assign Foreman D. Pitts for overtime service (flagging) at Mile Post 1.7 in the vicinity of Richmond, Virginia beginning on June 19, 2000 and continuing through July 25, 2000 and instead called and assigned junior employee R. W. Mullen [System File B07319300/12(00-0814) CSX].
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Pitts shall now be compensated for two hundred fifty-nine and one-half (259.5) hours' pay at his respective time and one-half rate of pay.”

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.

The Claimant, a Foreman, asserts that he was not offered the opportunity to perform flagging work commencing June 19, 2000, which was related to a contractor working for the State of Virginia painting a bridge over the Carrier's tracks near Richmond. The flagging work was given to junior employee R. W. Mullen.

The record shows irreconcilable facts.

According to Roadmaster G. L. Phelps, he called Acca Yard and advised Production Foreman C. L. Lee of the work opportunity and the Claimant and Foreman J. Brice were present. Further, according to Phelps, the answer he got was to let Mullen do the work. A statement in response dated November 5, 2000, signed by the Claimant, Lee and Brice states that they were not offered the work. A statement dated May 25, 2001 from Labor Relations Manager T. L. Kennedy states that on March 28, 2001, Lee told him that Phelps had offered the work to the Claimant on two occasions.

Thus we have a record where Lee denies the work was offered to the Claimant and then tells a Carrier official that the work was offered to the Claimant. We can find no basis in this record to determine which facts are accurate to conclude that the Claimant was not offered the work before junior employee Mullen was given the assignment. The burden of proof is on the Organization. If the material facts are in dispute, the Organization has not carried its burden and the claim must be denied.

AWARD

Claim denied.

Form 1
Page 3

Award No. 37300
Docket No. MW-36961
04-3-01-3-606

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 21st day of December 2004.