

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13469

Docket No. 13268

99-2-97-2-38

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**(Brotherhood Railway Carmen, Division of Transportation
(Communications International Union**
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Louisville & Nashville
(Railroad Company)

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- 1. That the Louisville and Nashville Railroad Company, (now a part of CSX Transportation and hereinafter referred to as Carrier) violated the controlling Agreement, in particular but not limited to Rules 29, 30, 104, and letter Agreement dated November 11, 1976, rights of Chattanooga, TN (L&N) Carmen H. E. Fowler on January 20, 1996; W. E. Burns on January 23, 1996; and W. B. Davis on February 6, 1996, hereinafter referred to as Claimants, when Carrier instructed and/or allowed outsiders to this property, Atlanta, GA Seaboard Coast Line Railroad (SCL) Carmen to perform carman’s work of mechanical inspections and repairs on freight car SOO 8758 on January 20, 1996; CSXT 247563 and CSXT 482467 on January 23, 1996; and CSXT 812821 and CSXT 803920 on February 6, 1996 at Wyvern Yards on L&N property north of Cartersville, GA.**
- 2. Carrier should now be ordered to compensate Claimant Fowler four (4) hours overtime pay for January 20, 1996; Claimant Burns eight (8) hours overtime pay for January 23, 1996; and Claimant Davis eight (8) hours overtime pay for February 6, 1996, account of violation of Claimants’ contractual rights to work performed on January 20 and 23, 1996 and February 6, 1996 by outsiders to this property.”**

FINDINGS:

The Second 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 essential facts of this case are not in dispute. On the dates at issue, the Claimants were regularly employed as Carmen on Carrier's former Louisville and Nashville (L&N) Railroad property at Chattanooga, Tennessee, under the provisions of the September 1, 1943 Agreement between the L&N and the Organization. On those dates Carrier called SCL-Agreement employees to perform the work described in the above claim in the Wyvern Yard located at Junta, Georgia.

On March 5, 11, and 14, 1996, claims were filed by the Organization on behalf of the named Claimants. In that letter, the Local Chairman maintained that Carrier violated the Rules cited and the November 11, 1976 Letter Agreement by sending Carmen from Atlanta to Wyvern Yard to inspect and repair various cars. The Local Chairman also asserted that because Wyvern Yard is ten miles north of the Junta Tower, it is within the former L&N properties. Thus, according to the Organization, the Carrier should have called Claimants, who were former L&N employees.

In its March 30, 1996 denial of the claim, the Carrier contended that Wyvern Yard is located in the Cartersville area and is considered a part of the Cartersville switching district. It maintained that Wyvern Yard is in the Cartersville community and is, therefore, considered part of Cartersville. Thus, according to the Carrier, Wyvern Yard is a part of the Cartersville operation and, therefore, Carmen at Atlanta are properly called to respond to work to be performed there. The Carrier also insisted that notwithstanding its position concerning the work performed, the Organization's

claim for time and one-half was excessive in light of the fact that the Claimants performed no work.

At issue in this case is application and interpretation of the following provisions in the Agreement between the Parties, including a Letter Agreement dated November 11, 1976. That language reads, in pertinent part, as follows:

“RULE 29 -- SENIORITY

... 29(b) Seniority of employees in each craft covered by this agreement shall be confined to the point employed for those who perform work as per special rules of each craft in the various departments of the railroad as follows: . . .

Four subdivisions of the Carmen as follows:

Patternmakers
Upholsterers
Painters
Other Carmen
Coach Cleaners

. . . At South Louisville Shops the Air Brake Room, Coach Carpenters, Painters, Engine Carpenters, Planing Mill, Cabinet Shop and Plating Shop; and Louisville Terminal Car Department, Roundhouse and Union Passenger Station seniority rosters will be maintained separately as heretofore. . . .

RULE 30 -- ASSIGNMENT OF WORK

30(a) None but mechanics and apprentices regularly employed as such shall do mechanics work as per special rules of each craft, except foremen at outlying points, as listed below. Where there is not sufficient work to justify a mechanic of each craft, the mechanic, mechanics or foremen employed at such points shall, so far as capable, perform the work of any craft that may be necessary. . .

RULE 104 - CLASSIFICATION OF WORK

Carman's work shall consist of building, maintaining, dismantling, painting, upholstering, and inspecting all passenger and freight cars, both wood and steel. . . . Trucks, pipe and inspection work in connection with air brake equipment on freight cars. . . . Car inspectors, safety appliance and train car repairers . . . and all other work generally recognized as Carman's work.

LETTER AGREEMENT -- NOVEMBER 11, 1976

. . . In connection with the agreement executed this date covering coordination of SCL, L&N, and AJT mechanical forces at Atlanta, it is agreed that Section 1 (c) of that agreement, reading:

'(c) The SCL working agreements (effective January 1, 1968, and as subsequently amended) shall apply to all mechanical work performed by L&N and AJT employees, including line of road work on all properties.'

is interpreted to mean:

The carman position at Cartersville and the incumbent shall be placed under the SCL Agreements. The employee assigned thereto will continue to perform the same duties as previously performed prior to the coordination. If mechanical forces are needed north of Cartersville, L&N forces will be used. If mechanical forces are needed at Cartersville or south thereof, SCL forces may be used."

The essence of this dispute centers upon the last paragraph of the November 11, 1976 Letter Agreement. The Carrier insists that the work at issue was "within the Cartersville switching district." The Organization contends that it is north of Cartersville and, therefore, Carrier is required to call employees from the former L&N. The Organization maintains that Junta Tower is the mile post where the different subdivisions, W&A, K&A, SCL, and Atlanta merge. Therefore, according to the Organization, the territory north of Junta Tower is L&N property, and south of Junta Tower is SCL property.

The Carrier asserts that the Letter Agreement of November 11, 1976 has been interpreted to mean that locations within the Cartersville Terminal having a Cartersville address, which includes Wyvern Yard at Junta, are considered as being "at Cartersville." Thus, the Carrier insists that all such locations are properly serviced by SCL Carmen out of Atlanta. It contends that the Letter Agreement has never been applied in the strict "geographic" context that the Organization proposes in the instant dispute.

The Organization cited various Awards in support of its position. The Board reviewed all of those Awards. In each instance the contract language was apparently clear enough to enable the Board to discern between work accruing to Agreement employees and work not accruing to Agreement employees. In Second Division Awards 9888 and 9741 the issue involved employees not employed by the Carrier. In Second Division Awards 5702, 6635, and 7616 the evidence before the Board was apparently clear enough to enable the Board to determine where one territory ended and the next began. Neither situation applies in this case.

The language contained in the November 11, 1976 Letter Agreement gives neither actual geographic boundaries (township, village, etc.), nor Mile Post designations to use as a guide in delineating "north of Cartersville" versus "Cartersville and south of Cartersville." The language as it stands supports neither Party's interpretation. Accordingly, because the Organization has not offered a preponderance of the evidence in this case, its claim must fail. However, the Board exhorts the Parties to negotiate a clear definition of the applicable boundaries to be used in cases of this nature. This is a dispute that is far better left to resolution at the bargaining table than to the determination of the Board.

AWARD

Claim denied.

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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 Second Division

Dated at Chicago, Illinois, this 5th day of October 1999.