

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37372
Docket No. SG-37429
05-3-02-3-475

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Seaboard
(Coastline Railroad)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (CSXT):

Claim on behalf of L. D. Massie, for 47 hours, T. E. Haselden, for 83 hours, S. W. Taylor, for 83 hours, K. F. Purvis, for 45 hours, D. R. McKenzie, for 83 hours, A. B. Chandler II, for 107 hours, P. D. Kirk, for 107 hours, J. H. Turbeville, for 107 hours, R. E. Hughes, for 23 hours and R. M. Loren, for 107 hours paid at the differential rate of \$1.00 each, account Carrier violated the current Signalmen's Agreement, particularly Rule 22 and CSXT Labor Agreement 15-093-98, when it used the Claimants in conjunction with a boring team in the Hamlet Yard, the Claimants received instruction and training on the use of the boring equipment from June 4, 2001, through June 12, 2001. Carrier's File No. 01-0139. General Chairman's File No. SCL-09-10A. BRS File Case No. 12205-SCL.”

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 Organization filed the instant claim on the Claimants' behalf contending that the Carrier violated the Agreement, particularly Rule 22 and CSXT Labor Agreement No. 15-093-98, when it failed to pay the \$1.00 per hour premium to the Claimants while they worked as part of SCL Boring Team 7V05 in Hamlet Yard on the claim dates.

The Organization maintains that the training that the Claimants received and the work that they performed clearly was work associated with fulfilling the duties of a Boring Team employee. Contrary to the Carrier's assertion, Rule 22 does not require an employee to be replaced in order for Rule 22 to apply. The Organization points out that if the Carrier had not used these System Construction Team employees to perform the work at issue, then the Carrier would have had to bulletin additional positions on the Boring Team and there would be no question that these employees would have received the \$1.00 per hour premium. The Organization argues that the Carrier should not be allowed to evade the Agreement by training and temporarily utilizing System Construction Team employees to perform the work of Boring Teams without proper compensation.

The Organization emphasizes that the Board repeatedly has held that the duties of a higher-rated position cannot be assigned to employees in lower-rated positions without regard for the pay rates attached to the work of the higher-rated position. In this case, the record shows that the Claimants were used to perform the work of the higher-rated position, so the Carrier was obligated to compensate them at the rate of that position for the period in which they performed that work. The Board consistently has held that when a claimant substantially performs work in a higher-rated position, the claimant should be compensated at the higher rate. The Organization maintains that this same conclusion applies in the instant case.

The Organization disputes the Carrier's assertion that the Claimants were not assigned to positions on the Boring Team. The Organization points out that the Claimants temporarily were assigned/required by the Carrier to perform the duties of Boring Team members. The Organization further asserts that it is not new in the industry to require gang employees to work temporary assignments, and it is disingenuous for the Carrier to assert that the Claimants were not assigned to perform these duties when it trained the Claimants to perform the tasks of Boring Team employees. The Organization asserts that the language of Rule 22 and CSXT Labor Agreement No. 15-093-98 is clear and unambiguous. Rule 22 clearly provides that when an employee fills a higher-rated position, the employee shall receive the higher rate. The Carrier did not offer any explanation why the work "assigned" should not be given its plain and ordinary meaning.

The Carrier initially contends that the Claimants, who were assigned to System Construction Teams 7XD5 and 7XO2, were neither assigned to nor filled the place of any Boring Team incumbent. Moreover, just as the Carrier did not pay the \$1.00 arbitrary payment to the Claimants, the Carrier did not impose upon the Claimants assisting the Boring Team the conditional employment features of the excepted positions. The Carrier points out that the Claimants were not excepted from the normal displacement and bidding provisions, so they were free to bid on any vacant position and were not required to stay on their positions for at least six months, as were the incumbents of the Boring Team who were paid the \$1.00 arbitrary payment.

The Carrier asserts that the Organization's logic in connection with this claim is faulty. None of the Claimants filled the assignment of any incumbent on the Boring Team. The Organization's admission of this fact severely hampers its argument for additional compensation under Rule 22 because this Rule contemplates filling another employee's assignment in the absence of that incumbent. The Carrier maintains that the Claimants simply worked with the Boring Team to complete a construction project; the Claimants were assisting the Boring Team.

The Carrier additionally emphasizes that the Organization's claim is disingenuous because the Claimants did not fill any Boring Team assignments and they were paid the same hourly rate as the incumbents of the Boring Team. The

Carrier argues that Rule 22 was not violated, and it does not even apply to the instant case. The Carrier further argues that because the Claimants were occupying positions on System Construction Teams and were not regularly assigned to Boring Team positions, the Claimants were not eligible for the \$1.00 per hour premium payment. The Carrier contends that the Claimants do not fall within the restrictive but rewarding conditions of CSXT Labor Agreement No. 15-093-98 because this Agreement only applies to employees regularly assigned to a Boring Team. CSXT Labor Agreement No. 15-093-98 is a special and unique Agreement that applies only to a select group of employees identified as incumbents occupying Boring Team positions. The Carrier asserts that the Organization failed to demonstrate the Claimants' contractual entitlement to the \$1.00 premium payment.

The Board reviewed the record and finds that the Organization failed to meet its burden to prove that the Carrier violated the Agreement when it used the Claimants in conjunction with a Boring Team in Hamlet Yard from June 4 through June 12, 2001. Therefore, the claim must be denied.

CSXT Labor Agreement No. 15-093-98 provides:

"Section 4 – Excepted Positions, Gangs/and Teams

- A. The parties may establish boring gangs or teams to perform work requiring specialized training or equipment. Employees assigned to such positions will be afforded necessary training, allowed \$1.00 per hour premium, and be excepted from the normal displacement and bidding provisions . . ."

Consequently, it is clear that the \$1.00 premium payment is only to be paid to the incumbents of a Boring Team on the basis of the conditional employment features of the assignment. The record reveals that the Claimants were neither assigned to nor filled the place of any Boring Team incumbent on the claimed dates. The Carrier did not impose upon the Claimants assisting the Boring Team the conditional employment features of the excepted positions. The Claimants were not excepted from the normal displacement and bidding provisions. At the time, they were free to bid on any vacant position and were not required to stay on their position for a minimum of six months as were the incumbents of the Boring Team

who were paid the \$1.00 premium payment. It is clear that the only employees who were entitled to the payment are those that are regularly assigned to the position. These Claimants were just assisting, they were not assigned to those positions.

For all of the above reasons, the claim must be denied.

AWARD

Claim denied.

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 24th day of February 2005.