

PUBLIC LAW BOARD NUMBER 4138

Award Number: 1

Case Number: 1

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

CSX TRANSPORTATION INC.

STATEMENT OF CLAIM

First: that agreement was violated when the Carrier assigned the Knoxville Section Gang on the Jena Section Gang territory.

Second: that Claimants C. C. Robertson, D. L. Hammac, R. F. Leach, J. E. Gaylor and J. B. Ivey be paid eight hours straight time and two hours overtime at Track Repairman's rate of pay.

FINDINGS

On November 19, 1985, Carrier formally abolished the Jena, Tennessee Section Gang. The Claimants, members of that gang, were subsequently furloughed. In January 1986, the Organization filed claim on behalf of the Claimants seeking compensation on the basis that Carrier allowed the Knoxville Section Gang to perform services previously performed by the Jena Gang.

The issue to be decided in this dispute is whether Carrier was obligated under the Agreement to use the Claimants to perform the service in question.

The Organization contends that Carrier violated the Agreement by unilaterally abolishing the Jena Gang and assigning the work performed by that gang to the Knoxville Gang. The Organization argues that Carrier is required by the Scope Rule to negotiate before reassigning work reserved under the Agreement to other employees. The Organization further argues that the Agreement required Carrier to use Jena Gang workers to perform the service in question absent agreement to the contrary.

Carrier contends that the employees who performed the work in question were senior to the named Claimants and were therefore entitled to perform that service. Carrier further contends that those employees furloughed due to the abolishment of the Jena Gang had no subsequent right to perform work over active employees. Carrier maintains that it has a right to reduce forces when it deems it necessary, and that it may use other employees to occasionally perform services previously performed by the furloughed employees. Carrier argues that under the Organization's position, it would be impossible to service any area where force reductions had taken place. Carrier maintains that the Organization has failed to establish that the occasional work done by active employees constitutes "work remaining", requiring the retention of the furloughed employees. Carrier further asserts that nothing in the Agreement prohibits it either from reassigning work or abolishing work; and that there is therefore no contractual support for the Organization's claim. Finally, Carrier contends that since there was no vacancy to be filled, there is no basis for the compensation requested.

After review of the record, the Board finds that the Organization's claim must be denied.

The Organization has failed, as is its burden, to establish that the Claimants were entitled under the Agreement to perform the work in question. The employees who actually performed the work held seniority in that district and were on active status. We find no evidence, contractual or otherwise, that the work in question was exclusively reserved for the Claimants. We further find no evidence that the service performed was of such a regular nature as to constitute the creation (or re-creation) of a position. Nothing in the Agreement prohibits Carrier from using employees for occasional service in an area where furloughed employees previously performed the work. Furthermore, nothing in the Agreement prohibits Carrier from eliminating or abolishing work. We therefore find that Carrier acted within its managerial discretion in abolishing the Jena Gang and allowing other employees to perform occasional service in that area.

AWARD

Claim denied.

Nicholas Pumas
Neutral Member

L. Womble
Carrier Member

Bryce L. Hall & dissent
Organization Member

DATE:

February 1, 1988