PUBLIC LAW BOARD NO. 4138

Award No.: 13

Case No.: 13

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

And

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM

First: that the agreement between the two parties was and is still being violated. (Rules 11(a), 11(b), and Appendix 23, Item 19.)

Second: that claimants R. P. Roper, E. Fry, T. H. McCord, M. D. Alley, R. C. Henderson, W. H. Taylor, A. A. Hardison, C. W. Norcross, C. Buford, B. Hardison, J. C. Davis, R. C. Franklin, H. Atkins, J. Ward, W. L. Love, Jr., S. E. Stamper, C. R. Gore, P. K. Bennett, B. G. Collins, W. L. Caldwell, J. E. Chatman, G. D. Gilliland, A. L. Brown, J. W. Malugin, R. L. Spencer, S. L. Holland, and V. A. Stanley, be paid $6.00 per day.

FINDINGS

Claimants were employed at the Carrier's System Rail Welding Plant at Radnor Yard in Nashville, Tennessee.

The System Rail Welding Plant at Radnor Yard was established pursuant to a Memorandum Agreement dated January 29, 1965. This Memorandum Agreement

provided that the positions at the Yard would be considered system service assignments and:

> Once established and upon being awarded, the positions will be considered as "System Service" assignments, according to Rule 11 of the Schedule Agreement, Rule 11 of the Schedule Agreement is hereby amended to include positions at Welding Plant, Radnor Yard, Nashville, Tennessee.

The current Memorandum Agreement governing the yard, dated March 26, 1971, continues to provide that the positions are considered system service and that:

> 19. Once established and upon being awarded, the positions will be considered as "system service" assignments, according to Rule 11 of the schedule Agreement. Rule 11 of the Schedule Agreement is hereby amended to include positions at Welding Plant, Radnor Yard, Nashville, Tennessee.
>
> 20. Employes who were not formerly employed in the old welding plant and whose residence is not in the Nashville Metropolitan Area, will be allowed their actual necessary expenses for a period not to exceed 60 days.

Rule 11(a) and (b) of the Agreement provide:

> SYSTEM SERVICE EMPLOYES
>
> 11(a) This group includes all employes who are regularly assigned to positions of operators and assistant operators of machines listed in Ranks 3 and 4, Track Subdepartment; as provided in Rule 5(a); operators and assistant operators of machines listed in Ranks 3, 4 and 5, Bridge and Building Subdepartment (except drawbridge tenders, pumpers, watchmen, and truck drivers), as provided in Rule 5(b); electric welders and their helpers.
>
> 11(b) All employes included in section 11(a) above, by reference, when working off their Superintendent's division shall be allowed actual necessary expenses for the first 60 calendar days.

> Thereafter they shall receive, in lieu of their actual expenses, an allowance of $2.00 per calendar day for each day they are off their Superintendent's division, the Nashville Terminals to be considered part of the Nashville Division. For the purpose of this rule electric welders and their helpers will be paid hereunder when they are assigned to work outside of their respective seniority districts.

The issue to be decided in this dispute is whether the Carrier violated the Agreement by not paying Claimants $6.00 per day; and if so, what should the remedy be.

The position of the Organization is that the Carrier is in violation of the Agreement; but its argument is somewhat murky. The Organization contends that activities between the two parties between 1959 and 1965 are irrelevant to this matter. The Organization cites the March 26, 1971 Memorandum Agreement and notes that it "see[s] nothing in this agreement referring to an Electric Rail Welding Plant in Nashville, Tennessee." The implied argument seems to be that the Carrier has relied on an agreement which does not apply to the property in question. Finally, the Organization cites section 20 of the 1971 Memorandum and asserts that since that section precludes the receipt of expenses to employes living in the metropolitan Nashville area, that by implication Rules 11(a), 11(b) and section 19 of the Memorandum must apply. Pursuant to those requirement, Claimants are entitled to $6.00 per day.

The position of the Carrier is that there has been no violation of the Agreement and that Claimants are not entitled to the $6.00 per day claimed. The Carrier contends that the positions at Radnor yard are, and historically

have been, treated as stationary positions, not floating ones. This means that the positions have never been covered by Rule 11. The Carrier notes that, originally, camp cars were provided for the employes of the welding facility. The Carrier also cites the provision in the January 29, 1965 Memorandum Agreement which excepts Rule 11(b) from application to the employes at Nashville, who were allowed $12 per day for a period up to 45 days.

In short, the Carrier contends that the January 29, 1965 Memorandum Agreement included a compromise in which non-Nashville resident employes would receive system service assignments under Rule 11, but there were clearly defined expenses allowed by that Memorandum Agreement. Then, the 1971 agreement increased the allowed expenses to actual expenses for 60 days. These provisions were, however, in lieu of the provisions of Rule 11.

After review of the entire record, the Board finds that the Carrier did not violate the Agreement.

The Organization has not sustained its burden of proving a violation of the Agreement. Indeed, it is not entirely clear what the position of the Organization is. Nevertheless, the Carrier has shown by substantial credible evidence in the record that there was a series of memorandum agreements relative to this property. Contrary to the Organization's position that the period 1959 to 1965 is irrelevant, the Board finds it of great importance. It is clear that there had developed a practice never

before disputed whereby the benefits set forth in the memorandum agreements existed in lieu of any conflicting provisions of Rule 11.

Moreover, the undisputed facts in the record are that Claimants all lived in the metropolitan Nashville area. Therefore, a claim based on a theory which compels compensation based on non-residence in the Nashville area is not ripe for decision -- no real claim yet exists.

AWARD

Claims denied.

Nicholas Finias
Neutral Member

B. Claud Scott
Carrier Member

Bruce L. Hall
Organization Member

Date: April 3, 1990