

PUBLIC LAW BOARD NO. 4138

Award No.: 18

Case No.: 18

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

And

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM

Claimant D. Evans should be paid the difference between Assistant Foreman's rate of pay and Foreman-Surfacing Gang rate of pay. Claimant should be paid from June 1, 1985 and continuous until violation is stopped.

FINDINGS

During the times in question, Claimant was assigned as an assistant foreman on Extra Gang 150, which was a timbering and surfacing gang. Extra Gang 150 was divided into two units because the surfacing unit could not keep up with the pace of the tie unit. Claimant was in charge of the surfacing unit. Division of a gang under these circumstances is a not uncommon procedure and is based on the type and duration of tasks performed by each unit of the gang. Claimant called in reports, provided track protection, kept time and was responsible for the work performed by his unit. Claimant reported at least once a day to his foreman and received instructions from his foreman as to what tasks to perform. The undisputed

evidence in the record is that, historically, the occupants of assistant foreman positions such as Claimants have performed in this manner under the supervision of a foreman.

The rate of pay for a foreman in charge of a timbering and surfacing gang is greater than that of an assistant foreman. Claimant was paid as an assistant foreman. There had been no agreement to modify the duties of an assistant foreman.

The Organization alleges that during the progressing of this claim on the property, the Carrier's representative agreed that the work Claimant performed was different than the duties normally assigned to an assistant foreman.

Rule 1 of the Agreement provides:

SCOPE

Subject to the exceptions in Rule 2, the rules contained herein shall govern the hours of service, working conditions, and rates of pay for all employees in any and all subdepartments of the Maintenance of Way and Structures Department, represented by the Brotherhood of Maintenance of Way Employees, and such employee shall perform all work in the maintenance of way and structures department.

The issue to be decided in this dispute is whether the Carrier violated the Agreement by removing work from the foreman's position and assigning it to the assistant foreman's position without negotiation; and if so, what should the remedy be.

The position of the Organization is that the Carrier violated the Agreement by assigning work to Claimant that was foreman's work and not paying him at a foreman's rate. The Organization contends that this constitutes the unlawful modification of the assistant foreman duties without benefit of negotiation as is required under the Agreement. The Organization maintains that Claimant was performing foreman's duties, noting that "this particular assignment was more technical and different from duties normally assigned to assistant foremen."

The position of the Carrier is that it did not violate the Agreement, contending that Claimant was not performing duties other than those normally assigned to an assistant foreman. The Carrier maintains that Claimant was working under the supervision of the foreman, taking regular instructions from him as to what tasks to perform. Further, the Carrier maintains that all the work Claimant performed was at the direction or on behalf of the foreman. The Carrier cites numerous decisions for the proposition that the foreman and assistant foreman need not be in constant physical proximity. And the Carrier points out that this sort of separation is common on gangs performing this work due to the nature of the work and speed at which certain tasks are performed. Finally, the Carrier argues by implication that if Claimant did not perform foreman duties, then the Carrier did not modify an assistant foreman's duties without negotiation.

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 by failure to negotiate modifications of the duties of the assistant foreman position. The Organization has not presented sufficient credible evidence to show that Claimant performed duties other than those normally associated with his position.

On the contrary, the Carrier has adequately demonstrated that Claimant was performing duties historically performed by assistant foremen. It is not unusual for assistant foremen to operate physically removed from a foreman for parts of a day, as Claimant did here. However, Claimant met regularly with his foreman and worked -- both as a leader of his unit and as a direct assistant to the foreman -- at the direction of his foreman. No doubt, Claimant exercised some discretion and independent effort in carrying out his foreman's instructions, but this does not transform his work to foreman's work.

Since Claimant did not perform the work of a foreman, there were no modifications to the duties of his position without the negotiation required by the Agreement.

AWARD

Claim denied.

4138-18

Nicholas Pumas
Neutral Member

B. Claud Sweet
Carrier Member

Bryce L. Hall
Organization Member

Date: April 3, 1990