

LABOR RELATIONS
MAY 19 2003

BEFORE PUBLIC LAW BOARD 6564

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

CSX TRANSPORTATION, INC.

Case No. 5

Statement of Claim: Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it changed the start time of track inspectors by more than one (1) hour without allowing track inspectors the opportunity to exercise their seniority to another position in accordance with Rule 4 [System File G32305701/12(01-0367) CSX]
2. As a consequence of the violation, "...all Track Inspectors whose hours have been changed more than one (1) hour, be given the right to make a displacement to the position of their choice."

Findings:

This claim was filed on behalf of all employees of the Carrier who have established and hold seniority in the Track Department as track inspectors. At issue are Rules 4 and 12 of the June 1, 1999 System Agreement and Section 4 of the Track Inspectors Agreement of October 1, 2000. Those provisions state, in relevant part:

RULE 4 – SENIORITY

* * * *

Section 2. Exercise of seniority.

- (a) Except as otherwise provided, an employee may exercise seniority to a position for which he is qualified:

* * * *

3. when the starting time of his position is changed more than one (1) hour except changes caused by Daylight Saving Time.

RULE 12 – STARTING AND ENDING TIME AND CHANGES THEREIN

- (a) Except as otherwise provided, time of employees will start and end at their advertised headquarters.
- (b) Daylight assignments shall start between 6:00 AM and 8:00 AM.

MEMORANDUM OF AGREEMENT

4. During the period from April 15 to October 15 of each year Track Inspectors and Assistant Track Inspectors may have their starting time changed to between 6:00 a.m. and 11:00 a.m. The starting time will not be changed without giving the employee affected twenty-four (24) hours notice. Track Inspectors and Assistant Track Inspectors assigned to positions that start later than 8:00 a.m. will be allowed a special allowance of \$1.00 per hour for all hours worked.

Track Inspector R. Yates initiated this claim because on April 11, 2001, Roadmaster Weatherford informed him that the starting time for track inspectors would be changed from 7:00 a.m. to 10:00 a.m. At that time, Track Inspector Yates asked that he be allowed to exercise his seniority to another position. Initially, it was agreed that Yates had the right to make this bump. Subsequently, Yates was told that he had to remain on his current position.

By letter dated May 5, 2001, the Organization presented a claim in which it asserted that track inspectors had a contractual right under Rule 4, Section 2(3) of the Agreement

to vacate their assignments by the exercise of seniority when the starting work time of their positions was changed for more than one hour between the hours of 6:00 a.m. and 11:00 a.m. The claim was progressed and discussed in conference without resolution and was thereafter presented to this Board for determination.

The Organization contends that the Carrier violated the Agreement when it changed the starting time of track inspectors by more than one hour without allowing a displacement in accordance with Rule 4. While the Organization acknowledges that the Track Inspectors Agreement of October 1, 2000 gave the Carrier the right to change the starting time of track inspectors between 6:00 a.m. and 11:00 a.m. with 24 hours' notice and special allowance of \$1.00 per hour for all hours worked, it submits that this language did not modify or eliminate Rule 4 of the Agreement. Rule 4 clearly permits employees whose hours are changed to stay on the position or make a displacement.

The Carrier emphasizes that Section 4 of the Track Inspectors Agreement was specifically designed to provide flexibility in the starting work time of track inspectors. It was intended to take advantage of the most convenient time to perform right-of-way inspections and to work during daylight hours. In exchange for this latitude in making assignments, CSXT agreed to pay the incumbents an additional \$1.00 per hour when their jobs start later than 8:00 a.m. Thereafter, many employees willingly accepted the unique working conditions and pay of the track inspector positions.

The Carrier submits that it is "nonsensical" to suggest that the Track Inspectors Agreement was designed to have the incumbents vacate their assignments at a most critical time when the flexibility of this agreement was triggered. The Organization's

interpretation of the Agreement, asserts CSXT, could result in the track inspectors never being used with the flexibility that was mutually intended. The Carrier holds that a rule of reason should apply and that Section 4 of the Track Inspectors Agreement should supersede the exercise of seniority provisions of Rule 4 of the System Agreement. This is especially true since the incumbents of the track inspector jobs were fully aware of the flexibility of these assignments when they first accepted them.

Opinion

Rule 4, Section 2 is clear and unequivocal. It states that “except as otherwise provided, an employee may exercise seniority to a position for which he is qualified...when the starting time of his position is changed more than one (1) hour except changes caused by Daylight Saving Time.” This language does not contain any exceptions or modifications for track inspectors, and therefore none may be implied.

The Track Inspectors Agreement of October 1, 2000 does not change or supersede the unambiguous language of Rule 4 in regard to an employee’s contractual rights when starting times are changed by more than one hour. Section 4 of the Track Inspectors Agreement gives the Carrier greater flexibility by permitting it to change the starting times of track inspectors to between 6:00 a.m. and 11:00 a.m. from April 15 to October 15 each year. It does not, however, eliminate a track inspector’s right to exercise seniority to another position if the start time is changed by more than one hour. CSXT is reading into the language a limitation that was not negotiated and that does not exist. Had it been the mutual intent of the parties for Section 4 of the Track Inspectors Agreement to supersede Rule 4, presumably, they would have set forth that intent in clear language.

It is a well-established principle that agreements must be applied as written. As was held in NRAB Third Division Award 1248:

...This 'Board must construe and apply agreements as the parties make them, and it has no authority to change them even to avoid inequitable results from their application.' Award No. 794."

A similar theme was sounded in NRAB Third Division Award No. 18423:

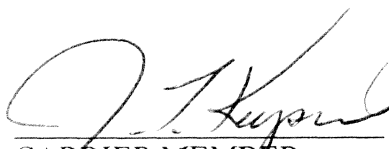
...It is axiomatic that this Board may only interpret and apply collective bargaining agreements negotiated and executed by the parties. We are without jurisdiction to add to, alter or detract from the written agreement.


...We are bound by the clear and concise language of the Agreement of July 29, 1968. We cannot read into it something that is not there....Had the parties intended such a limitation, it would have been a simple matter to have so worded their intention....

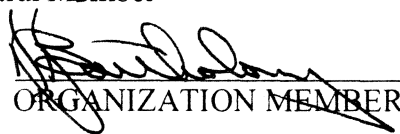
Given the findings above, it must be held that the Carrier violated the Agreement when it refused to permit track inspectors with start times changed by more than one hour to exercise their seniority to another position. Inasmuch as the Carrier did not challenge or otherwise dispute the remedy requested, the instant claim must be sustained.

AWARD

The claim is allowed.


CARRIER MEMBER
I DISSENT
DATED: 6/27/03


JOAN PARKER, Neutral Member


ORGANIZATION MEMBER
DATED: 6-27-03