PUBLIC LAW BOARD NO. 4138

Award No.: 11

Case No.: 11

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

And

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM

First: that the agreement was violated when Carrier assigned junior employe to work as track repairman on Northern Region Rail Gang.

Second: that claimant Leach be paid difference between Northern Region Rail Gang repairman rate (11.92) and district gang repairman rate (11.14) from March 4, 1985 through April 5, 1985. Also claimant be reimbursed his expenses.

FINDINGS

By letter dated February 27, 1985, Claimant was recalled from furlough "to work until you have been assigned a permanent position." When Claimant reported, he was told to report to the Northern Regional Rail-Laying Gang ("NRRG") until such time as he was assigned a permanent position. Upon doing so, Claimant was assigned not to the NRRG, but to District Gang 6N14. The Carrier advised Claimant that his seniority did not allow him to fill a position on the NRRG, but did permit him to work on 6N14. The rate of pay for the District Gang was $11.14, as opposed to $11.97 for the NRRG.

The NRRG was established pursuant to the parties' Agreement by Appendix No. 26. It is a roving gang which is permitted to work in several seniority districts. Appendix No. 26 provides, in relevant part:

> 14. If there are furloughed track subdepartment employees on the seniority district in which the Rail Gang is going to work, they will be given an opportunity to return to work for the amount of time that the Rail Gang is on their seniority district laying rail.

Rule 21(f) provides:

> Men working temporarily or extra are subject to displacement by senior men in the same manner as though the positions were permanent.

The three employes on the NRRG who the Organization asserts were subject to displacement compared to Claimant as follows:

Employee	Seniority Date	Rank 4	Rank 3
R. F. Leach	8-22-78	2-19-82 (4)	2-19-82 (3)
J. D. Cates	10-25-78	9-19-80 (2)	4-26-83 (4)
B. G. Hatmaker	8-25-78	2-19-82 (3)	2-19-82 (2)
K. R. Paul	8-22-78	10-18-79 (1)	10-18-79 (1)

The issue to be decided in this dispute is whether the Carrier violated the Agreement by its failure to assign Claimant to the NRRG; and if so, what should the remedy be.

The position of the Organization is that the Carrier violated the Agreement because the three employes cited were junior to Claimant, and he should have been permitted to displace them on the NRRG. The Organization contends that Claimant was recalled to a position on the NRRG and that he was entitled to such a position until it was abolished or he was displaced. It further maintains that the position the Carrier initially stated that Cates held does not exist.

The position of the Carrier is that it committed no violation of the Agreement. The Carrier contends that Appendix No. 26 does not require that a furloughed employe be put to work on the NRRG, but merely that he be returned to work for the amount of time that the NRRG is in the seniority district. The Carrier points out that this is exactly what it did relative to Claimant. Moreover, the Carrier rejects the Organization's position that Claimant was senior to three employes on the NRRG. It maintains that Cates and Hatmaker held positions for which Claimant was not qualified and that Paul was senior to Claimant in a position for which they both were qualified. Finally, the Carrier contends that Claimant is not entitled to compensation as a member of the NRRG, because he did not work as such.

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. Claimant could not have displaced any of the three cited employes even if the Agreement required that he be recalled to the NRRG as

opposed to another position in the seniority district. The Carrier correctly maintains that Cates and Hatmaker held positions for which Claimant did not qualify and that Paul was more senior to Claimant. Further, there is no clear requirement that Claimant work on the NRRG. He worked in a position for which he was qualified in the district while the NRRG was performing its duties.

AWARD

Claim denied.

Nicholas Fumas
Neutral Member

B. Claud Sweatt
Carrier Member

Bryce L Hall
Organization Member

Date: April 3, 1990