

Award No.: 27

Case No.: 27

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

CSX TRANSPORTATION, INC. (former L&N)

STATEMENT OF CLAIM

First: That the Agreement dated October 1, 1973 between the two parties was violated, along with Letters of Understanding dated August 20, 1975, May 12, 1976 and February 17, 1978, which will be Exhibits "A", "B", and "C".

Second: That claimants C. R. Blalock and S. R. Stewart be paid 8 hours straight time starting with August 3, 1985 through August 24, 1985, and 60 hours overtime that was made by outside contractor..

FINDINGS

From August 3 to 25, 1985, the Carrier contracted for the services of a Speno Rail Grinder. The Carrier did not bulletin the extra gang foreman and machine operator or temporary machine operator and temporary assistant machine operator positions which it had bulletined in the past. Provision for these positions is based on the parties' letter agreement dated August 20, 1975, which provides:

It was agreed that we could contract for the above work immediately and that we would bulletin an Extra Gang Foreman position at the rate of \$1,046.98 per month and an Operator position at the rate of \$1,010.52 per month to accompany this machine while it is being used on our property. These positions will be bulletined on each Division that the Grinder is being used and will be abolished when the Grinder leaves that particular Division. The Engineering Department is being advised that the Division scheduled to receive the Grinder should bulletin these positions in ample time before the Grinder gets to their Division so the successful applicants will be available to go along with the Grinder while it is on their Division. The successful applicants to these positions will be allowed their actual necessary expenses while with the Speno Rail Grinder. If there is a need for the services of personnel to put out fires behind this machine, then our forces will be used in that connection.

The employees in the positions in question usually followed the Grinder to extinguish fires. The Carrier states that the Speno Grinder used in August 1985 was a modification of the Speno Grinder used in the past in that it was outfitted with water in a manner that provided for protection against fires on the right of ways. The Organization states that neither the Grinder nor its method of operation was substantially modified since 1979. When operating the Grinder, a Carrier officer accompanied it to ensure that it was operated properly. On the particular dates in question, a Contractor operated the Grinder with a Carrier officer. Claimants are the employees who the Organization claims would have performed the work had the Contractor not done so.

Rule 1 of the Agreement provides:

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 employes, and such employes 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 not advertising the two fire guarding positions; and if so, what should the remedy be.

The position of the Carrier is that no violation occurred. It contends that Rule 1 is not relevant as it pertains to "hours of service, general working conditions and rates of pay...." Rule 1 does not reserve this work to the Organization and the Carrier maintains that the Organization is attempting to "featherbed." Further, the Carrier maintains that the upgrading of the Speno Grinder eliminated the need for additional firefighting personnel since the upgrading included firefighting and fire retardant aspects to the equipment. Finally the Carrier contends that the meaning of the language in the 1975 letter agreement does not bind it to advertising two additional positions every time a rail grinder was used; if it did, there would have been no need to include the language in the letter at all regarding the use of "our forces." Simply put, the Carrier argues that the Organization has not sustained its burden of proof.

The position of the Organization is that the Carrier has violated Rule 1 and the letter agreements by not advertising the two positions. The Organization maintains that the work that needed to be performed belonged to its craft; the work dealt with the physical area for which the Organization is responsible. The Organization maintains that the Carrier's position that

the Speno Grinder was upgraded is without merit. The Organization points out that the furnishing of a water car and the running of hoses to the engine and caboose for the purpose of extinguishing fires has been the practice since 1979. Therefore, there is no basis for alleging that the positions are not necessary.

After review of the entire record, the Board finds that the Carrier violated the Agreement and directs that the Carrier pay Claimants in accordance with the Agreement.

The Organization has established by substantial credible evidence in the record that there was no substantial change in the method of operation of the Speno Rail Grinder. Therefore, there is no basis for the Carrier's elimination (by failure to advertise) of the use of two additional employees to fight fires in the right of way. This work was taken away from the Organization in violation of Rule 1 and the letter agreements relevant to this operation. The Organization has operated the water truck and fire resisting equipment in the past and the evidence is that the Carrier is obligated to advertise for Organization personnel in order to conduct these identical tasks. Having failed to do so, the Carrier is in violation. This work is not reserved forever to the Organization. But so long as the Carrier performs the same tasks with the same equipment in the same manner, it must recruit the personnel for the tasks in the fashion required in those circumstances.

AWARD

Claimants will be paid 8 hours straight time for the period August 3 to 24, 1985 and 60 hours overtime.

Nicholas Pina
Neutral Member

Carrier Member

Byron L. Hall
Organization Member

Date: