

PUBLIC LAW BOARD NUMBER 4138

Award Number: 4

Case Number: 4

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

CSX TRANSPORTATION INC.

STATEMENT OF CLAIM

Claimants, D. L. Hammac and R. F. Leach should be paid eight hours each at Track Repairman's rate of pay.

FINDINGS

On January 7, 1986, the Organization filed claims on behalf of the Claimants seeking compensation on the grounds that Carrier violated the Agreement by using a Crane Operator and Welder Helper to perform Track Repairman's work on December 17, 1985.

The issue to be decided in this dispute is whether Carrier violated the Agreement by using a Welder Helper and Machine Operator to perform track repair duties; and if so, whether the Claimants are entitled to the compensation sought.

The Organization contends that Machine Operator T. Campbell performed Track Repairman's work on the date in question. The Organization alleges that Carrier in effect admitted that Campbell performed such service. The Organization further contends that Welder Helper J. Tillett also performed

Track Repairman's work on that date. The Organization alleges that Tillett was assigned as a Welder Helper on the date in question, and not as a Track Repairman as alleged by Carrier. The Organization argues that Carrier is obligated to provide Tillett's payroll records to establish what classification he was working under on the date in question, and that its failure to do so is evidence that Tillett was, in fact, compensated as a Welder Helper. The Organization maintains that Carrier's use of Tillett and Campbell to perform track repair work was in clear violation of the Agreement, and that the Claimants are therefore entitled to the compensation requested.

Carrier contends that Campbell was properly used for track repair duties. Carrier cites the fact that Campbell, as a System Service Machine Operator, is governed by Rule 11 and argues that under Rule 11, Campbell is entitled to perform track repair work. Specifically, Carrier cites Rule 11(e) which states, "When the services of operators of machines are not needed on the machines, they may be required to perform other work in their respective subdepartments. . .", and maintains that Campbell was utilized in accordance with that provision.

Carrier further maintains that Tillett was properly utilized for track repair work. Carrier contends that Tillett was working as a Track Repairman on the date in question and was therefore clearly entitled to perform track repair duties. Carrier cites various rosters to establish that Tillett was in fact working as a Track Repairman and not a Welder Helper as alleged by the Organization. Carrier therefore argues that both Tillett and Campbell were fully entitled to perform track repair work under the Agreement.

Finally, Carrier contends that the Claimants, as furloughed employees, had no right to perform the service, since no vacancies existed on that date.

After review of the record, the Board finds that the Organization's claim must be denied.

The Organization has failed, as is its burden, to establish that the Claimants are entitled to the relief sought. Carrier has established that both Tillett and Campbell were entitled to perform track repair work. Under Rule 11(e), Campbell was entitled as an available Machine Operator to perform "other work", including track repair work in his track subdepartment. Tillett, as a Track Repairman, was unquestionably entitled to perform such service. Evidence produced by Carrier established that Tillett was working as a Track Repairman and not as a Welder Helper as alleged by the Organization. The Organization has produced no evidence to substantiate its allegation concerning Tillett's classification. We therefore find that Tillett was properly utilized as a Track Repairman on the date in question.

Finally, we find that the Organization has failed to provide any support for the compensation requested. The Claimants were furloughed employees. As such, they can only claim entitlement to work if an available vacancy exists. In the present case, the Organization has failed to establish that any vacancy existed. To the contrary, the fact that Campbell and Tillett were entitled under the Agreement to perform the work indicates that no vacancy existed. We therefore find that the Claimants had no right

under the Agreement to perform that work, and, accordingly, no right to the compensation sought.

AWARD

Claim denied.

Nicholas Puma
Neutral Member

L. Womble
Carrier Member

Bryce L. Bell, & dissent
Organization Member

DATE: February 1, 1988