

PUBLIC LAW BOARD NUMBER 4138

Award Number: 5

Case Number: 5

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

CSX TRANSPORTATION INC.

STATEMENT OF CLAIM

Claimant J. M. Campbell 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 1985 and continuous until violation is stopped.

FINDINGS

On August 14, 1985, the Organization filed claim on behalf of Claimant seeking compensation on the basis that, since June 17, 1985, Claimant had been performing Foreman's duties while being paid at the Assistant Foreman's rate.

The issue to be decided in this dispute is whether Claimant is entitled, under the Agreement, to Foreman's rate of compensation.

The Organization contends that Claimant is entitled to the higher rate of pay because his duties are essentially those performed by a Foreman, not an Assistant Foreman. The Organization alleges that Carrier admitted the similarity in duties and that Carrier's only explanation for the pay differential is that Claimant receives instructions from a Foreman. The

Organization argues that this distinction is irrelevant, since it is the nature of the work performed that determines the appropriate level of pay. The Organization maintains that Claimant performs virtually all the functions of a surfacing gang Foreman and therefore should be paid accordingly.

Carrier contends that the fact that no Foreman was directly present in Claimant's work area does not indicate that Claimant performed Foreman's duties. Carrier alleges that a Foreman was available to instruct Claimant's crew and that his lack of presence during the work day does not negate his existence. Carrier cites several awards to establish that a Foreman need not be in close physical proximity in order to exercise supervision and argues that the mere absence of a Foreman at Claimant's work site does not transform Claimant's position to that of Foreman. Finally, Carrier contends that Claimant would have performed essentially the same duties whether or not a Foreman was directly present. Carrier therefore maintains that there is no basis for the claim presented, since Claimant is not a Foreman and does not perform the duties of a Foreman.

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 Claimant is entitled to the higher Foreman's rate of pay. The evidence presented indicates that a Foreman was on duty and available, and that he instructed Claimant regarding his duties. We agree with those awards cited.

by Carrier that a Foreman need not be in direct proximity to the work site in order to exercise supervision. Since a Foreman was on duty and available, Claimant cannot claim Foreman status on the grounds that he was the only supervisory employee on duty. Finally, the Organization failed to establish that Claimant performed the same duties as a Foreman. The fact that he received instructions from the Foreman indicates that his duties were not equivalent. Furthermore, the Organization has failed to point to any specific duty that Claimant performed that he would not have performed as an Assistant Foreman. We therefore find that the Organization has failed to demonstrate Claimant's eligibility for the Foreman's rate of pay.

AWARD

Claim denied.

Nicholas Pumas
Neutral Member

L. Womble
Carrier Member

Rayce L. Hall I dissent
Organization Member

DATE: February 1, 1988