

PUBLIC LAW BOARD NO. 4138

Award No.: 7

Case No.: 7

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM

First: that the agreement between the two parties was violated when the Carrier crossed seniority districts by using the Russellville Section Gang (whose seniority is confined to the Nashville Division) to work on the Louisville seniority district.

Second: that claimants J. N. Bradshaw, E. E. Coomer, L. E. Vincent, and R. W. Buckman be paid 8 hours straight time at track repairman's rate of pay.

FINDINGS

Claimants are regularly assigned to the Mainline Subdistrict in the Evansville District. On November 6, 1985, members of the Russellville Section Gang, regularly assigned to the Nashville seniority district, worked on the Mainline Subdivision of the Evansville Division. On the day in question, the Carrier had no forces laid off on the Mainline Subdivision and all employees were fully scheduled, including Claimants. There was work which the Carrier deemed was necessary to perform on the Mainline Subdivision, so it assigned the Russellville gang to perform the work.

Rule 4(a) of the Agreement provides:

SENIORITY DISTRICTS

The seniority rights of employees are "Confined" to their respective seniority districts, as follows:

4(a) For employees in the Track Subdepartment: Cincinnati Division; Eastern Kentucky Division; Cumberland Valley Division; Knoxville and Atlanta Division; Louisville Division - Louisville to Mile Post 174 (including Lebanon Branch, Lebanon Junction, Kentucky to Sinks, Kentucky); Henderson Subdivision; St. Louis Subdivision (including 1/2 of the Evansville By-Pass Line to a marker approximately 5.15 miles north of the connection to the old St. Louis Subdivision); Birmingham Division north of Mile Post 383.0; Birmingham Division south of Mile Post 383.0 (including former NC&StL Railway south of Tennessee River on Huntsville Branch); Montgomery and New Orleans Subdivision; Pensacola Subdivision; Nashville Terminals (including former Tennessee Central Railway Company property from Vine Hill at Nashville to MP 129 at Crossville, including active branches or other tracks diverging therefrom); Nashville Division - Former NC&StL Railway west of Nashville, Tennessee and Memphis Subdivision, from Memphis, Tennessee to Mile Post 118; Chattanooga and Atlanta Division.

Rule 10(a) of the Agreement provides:

TRANSFER FROM ONE SENIORITY DISTRICT TO ANOTHER

10(a) If it should be essential, in the opinion of the Management, to efficient operation to transfer an employee from one seniority district to another in the same subdepartment, that may be done. Individual employees or gangs will not be transferred out of their respective seniority districts to another district, except under the following conditions:

1. In emergencies;
2. When there are no cut off employees in the same class in the seniority district to which the transfer is made;
3. In accordance with section (b) and section (c) of this rule. A temporary transfer shall not exceed 49 work

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days, unless extension is agreed to between the General Chairman and the Assistant Vice President - Personnel and Labor Relations.

The issue to be decided in this dispute is whether the Carrier violated the Agreement in assigning the Russellville gang to work on the Mainline Subdistrict; and if so, what should the remedy be.

The position of the Organization is that the Carrier violated the Agreement and that the work performed by the Russellville gang should have been performed by employees regularly assigned to the Mainline Subdivision. The Organization contends that the Carrier has incorrectly relied on Rule 10(a) as justification because the Carrier has not shown that an emergency existed. By implication, such an emergency would have justified the assignment of the Russellville gang to the Mainline Subdivision. In short, the Organization maintains that Rule 10(a) must be read in the conjunctive and that both conditions in 10(a)1 and 2 must be met in order to permit employees' working off their district.

The position of the Carrier is that it did not violate the Agreement because its actions are permitted by Rule 10(a) and decisions under that rule. The Carrier contends that it has the right to transfer forces as it sees fit and that no damage was done to Claimants since they were working on the day in question. The Carrier points out that the Organization has brought repeated claims based on the Carrier's failure to assign gangs from one seniority district to another in situations where no emergency existed

and contends by implication that it is inappropriate for the Organization to take the opposite point of view now.

After review of the entire record, the Board finds that the Carrier did not violate the Agreement.

The Organization has failed to sustain its burden of proving a violation. It has cited Rule 4(a) but has demonstrated nothing other than where Claimants work and where the Russellville gang worked. More importantly, the Organization has incorrectly read the plain meaning and decisions under Rule 10. That rule on its face reads in the disjunctive. There is no requirement that an emergency exist and that there be no cut off employees in the same class in the district to which the transfer is made. Only one requirement need exist and that was clearly the case here. Further, the language of 10(a)3 -- which refers to sections 10(b) and (c) -- makes it clear that the subsections of 10(a) are disjunctive (especially in the absence of the word "and"). Therefore, the Carrier's position that it could transfer the Russellville gang pursuant to Rule 10 is correct.

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Claims denied.

Nicholas Pumas
Neutral Member

B. Claud Scream
Carrier Member

Bryce L. Hall
Organization Member

Date: April 3, 1990