

AWARD NO. 21
CASE NO. 21

PUBLIC LAW BOARD NO. 4604

PARTIES)	BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)	
DISPUTE)	CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM

Claim by 44 named claimants for meals or meals and mileage
January 4, 1988 through February 2, 1988 for benefits under the
Agreement and Arbitration Award 298.

OPINION OF BOARD

On December 7, 1987 the Carrier advertised for 40 new positions on the PD&A seniority district on the Mobile, Alabama Division identified as Gang 5M76 commencing work January 4, 1988 located at Defuniak Springs, Florida. The assignment was specified as "permanent ... to perform work required of job." The Carrier asserts that the purpose of establishing the new positions was for a specific track rehabilitation project in the Defuniak Springs area.

Bulletin of December 23, 1987 awarded 27 of the 40 positions to PD&A seniority district employees who submitted bids. In the on-property correspondence, the Organization asserted that the Claimants were assigned the positions and required to report to those positions on January 4, 1988. The Carrier refuted that assignment assertion stating (see letter of May 25, 1988, Carrier Exh. F):

The facts are that each of the employee[s] bidding on and being assigned to the positions within the gang headquartered at DeFuniak Springs were PD Subdivision employees and as such held seniority on the district where the gang was established. Many of those employees resided in and around DeFuniak Springs. Other employees were allowed to work within the gang; however, they did not bid on nor were they awarded these positions. There were employees from the former A&WP Railroad who were furloughed who had no rights whatsoever to the positions they were allowed to work. There were also a few employees on the PD Subdivision who were furloughed B&B Employees who likewise had no seniority rights to the jobs in question. Being furloughed, and

having received requests from those employees to be allowed to participate in the work, the Carrier allowed them to participate per their request. Some of these employees simply showed up at the job site requesting that they be allowed to work and were permitted to do so.

As further reflected in the on-property correspondence, the Carrier asserts that the gang was established as a stationary gang; there was no need to provide lodging facilities and the specified project was completed and the gang was abolished on February 2, 1988.

The instant claim seeks meal expenses of \$195.00 for the 44 named Claimants and in addition, for four of those Claimants, the claim seeks mileage expenses varying from \$363.00 to \$774.40. The Organization asserts such payments are required in that Interpretation Nos. 8 and 12 of Arbitration Award 298 have been violated. Those interpretations state as follows:

INTERPRETATION NO. 8

Question: Carrier establishes a system gang at a fixed location in a terminal area or classification yard without camp cars. Employees are recruited from all over the railroad system with their homes at various points, none of which maintain their homes in the vicinity of the terminal or classification yard. Inasmuch as the employees are required to live away from their homes throughout their work week, may Carrier escape provisions of I-A-3 and B-3 and B-4?

Answer: Yes. See paragraph 1 of the memorandum of Board conference of September 30, 1967, which reads as follows: It was decided by the Board, that the provisions of Section I, shall not apply to employees where the men report for duty at a fixed point, which remains the same point throughout the year.

INTERPRETATION NO. 12

Question: Carrier practice over a period of many years has been to provide camp cars for gangs but camp car rules in effect do not make it mandatory that cars be provided. Employees assigned to such gang are recruited from an entire seniority district and work away from home while assigned to the gang.

May Carrier discontinue providing camp cars and escape payment under I-A-3?

Answer:

* * *

An employee cannot be transferred from coverage of Section I into Section II merely by the discontinuance of camp cars and/or the designation of a headquarters point.

In applying the foregoing principles and guidelines to the specific question at issue here, it is clear that the employees are in a type of service contemplated within the coverage of Section I. The Carrier may discontinue providing camp cars but may not escape payments under Section I except in locations where the men report for duty at a fixed point which remains the same point throughout a period of 12 months or more.

Third Division Award 22708 addressed a similar claim:

Carrier defends their actions in this case on the basis that the gang involved was established with a fixed headquarters for a specific construction project and for no other purpose; that, upon completion of the specific project, the floating gang was established to perform work of a continuing, progressive nature; and, that camp cars were thereafter furnished to the floating gang as provided for in the Rules Agreement.

In addition, Carrier argues that inasmuch as the project at Acme, North Carolina was discussed in considerable detail with the organization's representatives prior to the creation of the fixed headquarters gang and no substantial objections thereto were voiced, the employees are now estopped from advancing the type of claims outlined in the subject of this dispute. We find this argument persuasive if not convincing.

It does not appear from this record that Carrier was attempting to circumvent any of the provisions and/or requirements of the above mentioned Rules or Interpretation when they established the fixed headquarters gang at Acme, North Carolina.

...

There simply has been no showing in this case that the employees used were by nature of the work here involved the type of employees identified in the above mentioned Rules. The Rules Agreement has not been violated and we must, therefore, deny these claims.

This is a contract dispute. As such, the Organization has the burden of demonstrating a violation of the Agreement. We cannot say that it has done so in this case.

The evidence shows that the gang established at Defuniak Springs was stationary at a fixed

headquarters and was established for a specific project. Upon completion of the project, the gang was abolished. The Organization has not shown that the Carrier's actions were designed to avoid the providing of benefits under the governing rules. As in Award 22708, we must deny the claim.

AWARD

Claim denied.

Edwin H. Benn
Edwin H. Benn
Neutral Member

L. Womble
L. Womble
Carrier Member

N. J. Marquar
N. J. Marquar
Organization Member

Jacksonville, Florida
April 15, 1991