

BEFORE PUBLIC LAW BOARD 6564

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

CSX TRANSPORTATION, INC.

Case Nos. 1, 2, 3, 4, and 6

Statement of Claim: Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed and refused to properly identify the position title on Bulletin Nos. SLMN-0051 dated March 5, 2001 (**Case No. 1**); SLCE-0021 dated January 29, 2001 (**Case No. 2**); SLCW-0061 dated April 23, 2001 (**Case No. 3**); COHU-0020 dated March 5, 2001 (**Case No. 4**); JSNW-0005 and JSNW-0006 dated May 12, 2001 (**Case No. 6**).
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall cancel and re-advertise the aforesaid bulletins with the proper position title identification listing the machine title, and the Awardee shall be compensated for any monetary loss due to the position being advertised incorrectly.*

Background

The instant dispute was initially filed and progressed as separate claims. Inasmuch as they all involved the same rules and issues, however, they were combined for presentation to this Board.

As to **Case No. 1**, CSXT established a Bridge & Building (B&B) department Machine Operator "A" position on the Service Lane Work Territory of the Midwest North. The force number of the Machine Operator "A" position is 6K66. As a job with a "Floating" headquarters, it has neither a fixed reporting location nor a designated single

* The Organization's Statement of Claims was taken from the BMWE's letter addressed to the Third Division of the National Railroad Adjustment Board, dated August 2, 2002 (Carrier's Ex. A).

piece of machinery to operate to the exclusion of all other roadway equipment. The purpose of the assignment is to travel from bridge to bridge, participating in various rehabilitation projects, which include the operation of the various machines as listed in Rule 1:

Rule 1-Seniority Classes

The seniority classes and primary duties of each class are:

B&B Department

* * * *

D. Machine Operator Roster

Machine Operator-Mechanics, Machine Operators

Operate the following machines: Backhoe, Bridge Tie Crane, Locomotive Crane, Truck Crane, Pile Driver.

* * * *

With respect to the lead claim, on March 5, 2001, the Carrier advertised the position of Machine Operator "A" by bulletin number SLMN-0051. The Organization took exception, asserting that the bulletin did not properly identify the position title because the "title of the machine" was not included in the bulletin. In the Organization's view, the bulletin's failure to show the specific equipment that was to be operated denied applicants information that was contractually required, pursuant to Rule 3, Section 3(a), which reads:

RULE 3 – SELECTION OF POSITIONS

* * * *

Section 3. Advertisement and award.

- (a) All positions and vacancies will be advertised within thirty (30) days previous to or within twenty (20) days following the dates they occur. The advertisement shall show position title, rate of pay, headquarters, tour of duty, rest days and designated meal period.

Case Nos. 2, 3, and 4 involve the advertisement of Bridge & Building (B&B) department Machine Operator “A” positions on the Central East Service Lane Work Territory, Central West Service Lane Work Territory, and the Huntington District. Like Case No. 1, the positions involved in Case Nos. 2 and 3 are positions with “floating” headquarters; they also do not have either a fixed reporting location or a specific single piece of machinery to operate. The purpose of these assignments is to travel from bridge to bridge, participating in a variety of projects, which include the operation of the various machines listed in Rule 1. Case No. 4 deals with B&B department Machine Operator “A” position location in Huntington, West Virginia. There is no specific equipment assigned to that job.

Case No. 6 involves the advertisement of two welder helper positions located in the Welding Plant in Nashville, Tennessee. The incumbents of these assignments must qualify on all of the other welder helper positions in the plant. The Organization claimed, however, that a specific piece of equipment must be listed with each bulletined position.

Position of the Organization

The Organization emphasizes that Rule 3, Section 3(a) stipulates that all positions will be advertised and that the advertisement will show *position title*. The Organization contends that a position title is not the same as a job classification. Moreover, while the parties have specifically identified many types of equipment to be assigned to qualified bargaining unit members with seniority in particular classifications, few, if any, Maintenance of Way employees are qualified to operate all of the Carrier's machines. Absent the identification of specific equipment on each bulletin, prospective applicants for a Machine Operator "A" position would have no idea whether they would be qualified for the positions as bulletined. Nor would they know if a particular position would be desirable. Identifying the specific equipment to be operated on the position title of bulletined new positions gives meaning, as well as common sense, to Rule 3 in the context of the Agreement as a whole.

Moreover, according to the Organization, the practice has been to include position titles that identify specific equipment on bulletins advertising new positions and vacancies. This is made clear in correspondence that is part of the Record in this case, and which reflects that the parties have settled similar claims in the past. While the Carrier contended that its practice in the B&B department has been to advertise operators without identifying the specific machine to be used, the Organization argues that the Carrier failed to support its assertion with evidence.

As to Case No. 6, the Organization submits it is distinct from the other cases at issue herein because a virtually identical claim was presented to the Carrier by letter dated

September 2, 1999, and an on-property agreement was reached on February 16, 2000, as confirmed by the Organization's letter of April 10, 2000. (Employees' Ex. B-1). Based on the prior agreement involving the Welder and Welder Helper positions, the Organization submits that the Carrier has reneged on a commitment to bulletin positions at the Nashville Rail Welding Plant listing the specific job titles.

Position of the Carrier

The Carrier contends that the Organization's requested remedy, i.e. the cancellation and re-advertisement of the bulletined positions, is beyond this Board's jurisdiction because it has no authority to award injunctive relief. Additionally, the monetary portion of the claim is bereft of any specifics concerning the identity of any employee who lost compensation as a result of the alleged Agreement violation. Therefore, the Carrier urges the Board to deny the claims based on their procedural defects.

As to the merits of the claim, the Carrier submits that Rule 3 is clearly written in regard to the required bulletin information, and it does not include listing the machine title. The bulletins at issue contained information relative to position title, rate of pay, headquarters, tour of duty, rest days, and designated meal period. Thus, they met the requirements of Rule 3, Section 3(a). While the Organization seeks to rely on an alleged past practice of listing specific machines, the Carrier argues that past history does not supersede clear contract language. To the extent that machine titles might have been listed in the past, such listing was optional and beyond the requirements of Rules 1 and 3.

The Carrier also emphasizes that pursuant to Rule 3, Section 1, the successful applicant will be given equal and fair instruction and training up to a period of thirty

days, depending upon the machinery, in order to become qualified for the position. Additionally, machine operators are not restricted to operating a single piece of equipment. They operate several machines, as listed in Rule 1, Section D, and are paid the same hourly rate without regard to the equipment used for the year, week, day or hour. The same holds true for the welder helpers working in the Nashville Welding Plant. Moreover, CSXT's right to require the incumbent of these positions to have multi-qualification is supported by arbitral precedent.

Opinion

This Board's jurisdiction is limited to grievances and disputes arising from grievances or relating to the interpretation or application of agreements concerning rates of pay, rules, or working conditions and only those disputes as defined in Section 3, Second, of the Railway Labor Act, as amended by Public Law 89-456. Moreover, Section 2 of this Public Law Board No. 6564 Agreement, dated October 1, 2002, states: "The Board shall not have jurisdiction of disputes growing out of requests for changes in rates of pay, rules and working conditions, and shall not have authority to establish new rules." The scope of this Board's jurisdiction does not include injunctive relief as requested by the Organization, i.e. to order the Carrier to cancel and re-advertise Machine Operator and Welder Helper positions. Prior arbitration awards have consistently recognized this limitation on the remedial authority of public law boards under the Railway Labor Act. In Third Division Award No. 33846, for example, the Board stated:

The Statement of Claim before the Board is vague and lacking in specifics. In fact, it could readily be classified as a plea for injunctive relief, a plea the Board lacks authority to grant. (Carrier's Ex. P)

In another case, the petitioner challenged CSXT's action when it bulletined positions with rest days other than Saturday and Sunday. Petitioner requested as a remedy that the jobs be abolished and rebulletined. The claim was dismissed without any discussion of the merits in Third Division Award No. 36177, wherein the Board stated:

Awards too numerous to recite have consistently stated that when a declaratory judgment or injunctive relief is requested, it is beyond the jurisdiction of the Board. (Carrier's Ex. R).

Even assuming *arguendo* that the claims did not request a remedy beyond the Board's jurisdictional boundaries, they would still have to be denied on their merits.

Rule 3, Section 3(a) is clear and unambiguous in its terms. It states that advertisements for positions and vacancies "shall show position title, rate of pay, headquarters, tour of duty, rest days, and designated meal period." It does not require that "machine title" or "equipment title" also be listed. Yet, that is how the Organization reads the language.

Evidence in the Record reveals that in the past, CSXT on occasion has included in bulletins a listing of the machines to be used by the incumbent. Such listings, however, are discretionary; there is no language in the Agreement that requires the Carrier to advertise the positions in the manner sought by the Organization. Although the Organization argues that in Case No. 6, there was a prior agreement that Welder and Welder Helper positions would be advertised with a specific listing of the equipment to be utilized by the incumbent, there is no evidence that the agreement referenced in the Organization's letter of April 10, 2000 (Employees' Ex. B-1), extended beyond bulletin numbers JSNW-0002 and JSNW-0003, issued in 1999. As the Carrier admits, there may

be times when it serves the interests of both parties to include a listing of machine titles in position bulletins. However, this is an option, not a contractual requirement, and the Board is not persuaded that the settlement reached in 2000 in the Nashville Welding Plant was intended to cover future position bulletins.

Undoubtedly, information as to the types of equipment the incumbent will be operating can be useful to a potential applicant for an advertised job. The Carrier correctly points out, however, that under Rule 3, Section 1, the successful bidder will be given equal and fair instruction and training for up to thirty days, depending on the machinery, in order to become fully qualified for the position. Also significant is the fact that machine operators are not restricted to operating a single piece of equipment. As noted in Rule 1, Section D, machine operators use the backhoe, bridge tie crane, locomotive crane, truck crane, and pile driver. All the incumbents are paid the same hourly rate regardless of the particular equipment they use. In fact, the Agreement lists under "Positions" the title of Machine Operator A and indicates the hourly rate. There are no distinctions in that rate based on the equipment assigned.

It is undisputed that in Case Nos. 1, 2, and 3, the machine operator's positions have neither a fixed reporting site nor a designated single piece of machinery to operate. Moreover, the purpose of these assignments is to travel from bridge to bridge to participate in various rehabilitation projects, which require the utilization of different machines. In Case No. 4, there was no specific machinery assigned to the job located in Huntington, West Virginia. Thus, it was not necessary to specify the equipment for that position.

As to Case No. 6, it is undisputed that Welders and Welder Helpers are required to perform any tasks to which the Welding Class is normally assigned. Additionally, Appendix F, Section 10 of the CSX-BMWE 1999 Agreement states:

All welders and welder helpers assigned to the welding plant must qualify on all welder and welder helper assignments at the plant and, in addition, must qualify as acetylene-electric welder and/or helper. They will be allowed a reasonable time of not less than 60 work days in which to qualify.

Given the nature of the positions at issue and the varied tasks they encompass, it is likely that if the machine titles were required for these jobs advertisements, the listing would include *all* of those machines specified under Rule 1. This is because, as noted above, the machine operators are not limited to operating a single piece of machinery. Furthermore, the Carrier has the right to require incumbents in these positions to be qualified to operate the various types of equipment. This conclusion is buttressed by the fact that a Machine Operator A earns the same hourly rate regardless of the equipment used. The same is true for the Welder Helpers working in the Nashville Welding Plant. In this regard, the Board notes that it has long been held that the Carrier has authority to determine the qualifications of an advertised position and to assign work within a classification.

The Organization's claim is further undermined by its failure to provide any information as to exactly which machines each successful applicant was required to operate. Likewise, there is no evidence in the Record as to any employee suffering a monetary loss due to the positions being advertised without the listing of machinery to be

used. Given this vagueness on essential elements of its claim, combined with the Board's findings on the merits of the claims, the cases must be dismissed. The advertisements at issue conformed to the provisions of Rule 3, Section 3(a). They included position title, rate of pay, headquarters, tour of duty, rest day and designated meal period. The Organization has not demonstrated any violation of the Agreement. Nor has it proved that any employee was adversely affected by CSXT's actions. The claims, therefore, are denied.

AWARD:

The claims in Case Nos. 1, 2, 3, 4, and 6 are denied.


CARRIER MEMBER

DATED: 6/27/03


JOAN PARKER, Neutral Member


ORGANIZATION MEMBER

DATED: 6-27-03