

PUBLIC LAW BOARD NO. 7163

AWARD NO. 9

CASE NO. 9

Carrier Files: 12 (03-0636), 13(03-0956) and 12(03-0957)

BMWED Files: GEEA103, GEEA203 and GEEA303

PARTIES TO
THE DISPUTE: Brotherhood of Maintenance of Way Employees
Division - IBT Rail Conference
vs.
CSX Transportation, Inc.

ARBITRATOR: Gerald E. Wallin

DECISION: Claim

STATEMENT OF CLAIM:

- “1. The Carrier violated the Agreement when it eliminated the basic maintenance force foreman and ‘A’ Machine Operator positions headquartered at Grafton, Ohio and then established SLWT positions that performed the work and duties of the eliminated Grafton basic force positions beginning April 4, 2003 and continuing [Carrier Files 12 (03-0636), 13(03-0956) and 12(03-0957) CSX].
2. As a consequence of the violation referred to in Part (1) above, Claimant G. Gee shall be compensated at the applicable basic track foreman rate of pay for all straight time and overtime hours lost to him when an SLWT foreman performed the basic foreman duties beginning April 4, 2003 and continuing and Claimant M. Miller shall be compensated at the applicable ‘A’ Machine Operator rate of pay for all straight time and overtime hours lost to him when SLWT employees performed basic force machine operator duties beginning April 4, 2003 and continuing.”

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The instant dispute combines three separate claims whose on property records are virtually identical except for the claim dates listed. The first claim is for the period from April 4 through May 13, 2003. The second claim covers May 22 through June 18, 2003. The third claim spans from June 19 to July 31, 2003.

In addition to contentions on the merits in all three claims, the Carrier also advanced a procedural challenge to the validity of the second claim pursuant to the 60-day filing time limit established by Rule 24(a). According to the record, the prepared claim was misplaced for a time and was not mailed until August 15, 2003, which was some 85 days after the beginning of the time frame

that it covered.

All of the claims contend that Rules 1, 17, Appendix U and an associated Side Letter were violated when the Carrier allowed certain foreman and machine operator work to be performed by employees on a "floating" or mobile gang working the applicable Service Lane Work Territory (SLWT), which work was formerly accomplished by fixed-headquarters positions based at Grafton, Ohio in the Columbus Seniority District. For its position, the Carrier maintains that its actions were in compliance with the applicable terms of the Agreement in all three of the claims.

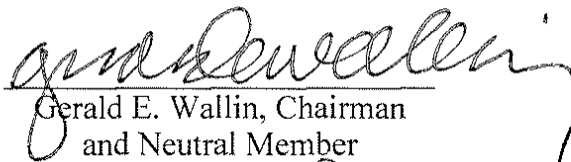
Our review of the record for the second claim shows that the Carrier's procedural objection was properly taken. Rather than depicting a series of new violations that would lend themselves to a continuing claim pursuant to Rule 24(e), the facts of this record demonstrate a claim of violation based on a singular failure to advertise fixed-headquarters positions to perform the disputed work. Although the effects of the alleged failure persisted for some time thereafter, it was nevertheless a singular alleged failure. Accordingly, per Rule 24(a), a claim, to be valid, had to be filed within the 60-day time limit. The second claim was not and must be dismissed for that reason.

On the remaining claims, a careful examination of Appendix U, Section 4.a. reveals two significant provisions. First, the Agreement recognizes that when mobile SLWT positions are established, a corresponding number of fixed-headquarters position may be abolished. Second, the Agreement makes the commitment that the establishment of SLWT gangs will not be used as a device to eliminate fixed-headquarters positions. This second commitment references Side Letter Number 2 which further amplifies the Carrier's obligation to maintain fixed-headquarters forces. That obligation is defined to require the Carrier to maintain not less than 40% of all BMWED forces in fixed headquarters. The required 40% ratio, however, applies on a system-wide basis and does not establish limits location-by-location.

On this record, it is clear that Appendix U is controlling. Nothing in any of the two surviving claims provides evidence that the Carrier's action violated the system-wide ratio required by the Agreement. Accordingly, they must be denied.

AWARD:

The second claim is dismissed. The first and third claims are denied.


Gerald E. Wallin, Chairman
and Neutral Member


R. C. Robinson,
Organization Member


J. T. Klimtzak,
Carrier Member

Date: Dec. 12, 2008