

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 2
Case No. 2

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

CSX Transportation, Inc. (formerly the Chesapeake and
Ohio Railway Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it assigned Assistant Track Inspector B. Walinga to perform trackman's work (replacing ties and surfacing track) between Mile Posts 101 and 105, at Mile Post 92.8 and between Mile Posts 34.3 and 57 on March 28, 29, 31 and April 6, 1994. [System File C-TC-9826/12 (94-5342) CON].
2. As a consequence of the above-stated violation, Claimant R. Siemon shall be allowed eight (8) hours pay per day at the trackman's straight time rate for the time expended by the assistant track inspector in the performance of the work in question.

FINDINGS:

This Board, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and the Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act, as amended; and
2. That the Board has jurisdiction over this dispute.

OPINION OF THE BOARD:

This dispute involves an allegation of the performance of scope covered work by an inappropriate person: an Assistant Track Inspector, who did not possess active seniority under the Agreement. The issue therefore narrows to whether the Carrier had a right to have the disputed work performed as specified under the facts and circumstances of the present dispute.

Section 12 of the May 1, 1988 Memorandum of Agreement between the parties authorizes Track Inspectors and Assistant Track Inspectors to "perform any routine track work in connection with

their field inspections." In the context of this affirmative defense relied on by the Carrier, the critical inquiry therefore requires a determination of whether the performance of routine track work occurred in connection with the field inspections and/or whether the circumstances involved a sufficient quantity of work to warrant recalling the Claimant from furlough.

The record specifies that the disputed work occurred on two consecutive dates (March 28 and March 29, 1994) and two additional dates (March 31 and April 6, 1994). A careful review of the record discloses that insufficient evidence exists concerning the quantity of the disputed work. Although the performance of such work occurred on four different dates, the claim omits any indication of the quantity of the work actually performed:


On March 28 and March 29, 1994 Assistant Track Inspector Bob Walinga worked as a Trackman between MP 101 and 105 replacing ties and surfacing with the Section out of Benton Harbor, Michigan. On March 31, 1994 Mr. Walinga worked as a Trackman surfacing Red Arrow Highway bridge curve MP 92.8 with Foreman Bob Brown. On April 6, 1994 Track Inspector Floyd Lee surfaced track at various locations between MP 34.3 and MP 57 with Foreman Bob Brown.


(April 20, 1994 Claim at 1.)

The Organization failed to meet its burden to prove that a vacancy had existed. The mere performance of the disputed work under the present circumstances failed to prove that the Claimant had the right to be recalled from furlough status, which had begun months earlier for seasonal business reasons. In particular, trackmen were present and working during the performance of the disputed work in a remote location, which the section gang had reached by hi-rail. As a result, the performance of the disputed routine work occurred in connection with the field inspections authorized by Section 12. No obligation existed for the Carrier to recall the Claimant from furlough under such circumstances. As a consequence, no basis exists to award compensation to the Claimant.


AWARD:

The Claim is denied in accordance with the Opinion of the Board.


Robert L. Douglas
Chairman and Neutral Member


Donald D. Bartholomay
Employee Member

Dated: 12/3/98


Patricia A. Madden
Carrier Member