

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 7
Case No. 7

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

CSX Transportation, Inc. (Former Louisville and
Nashville Railroad Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier improperly relieved Section Foreman J. T. Pruitt from the overtime service he was performing on May 23 and 24, 1994 and assigned Track Repairman Don Hopper to continue performing the overtime service [System File 14(40)(94)/12(94-0831) LNR].
2. The claim as presented by General Chairman Freddie N. Simpson on July 6, 1994 to Division Engineer T. S. Thoburn shall be allowed as presented because the claim was not disallowed by Division Engineer Thoburn in accordance with Rule 26.
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Section Foreman J. T. Pruitt shall be allowed thirteen (13) hours' pay at the foreman's double time rate and the difference between the eight (8) hours' pay at the foreman's straight time rate he received and the eight (8) hours' pay at the foreman's double time rate he was entitled to.

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:

The threshold issue involves whether the Carrier filed a timely disallowance of the claim. Rule 26 requires the filing of a disallowance "within 60 days from the date [the claim or grievance] is filed" The record indicates that the Carrier issued the disallowance in the present matter in a letter dated September 6, 1994. The Organization pinpoints the date of the filing of the claim as July 6, 1994 so that the filing of the disallowance occurred 61 days later, which exceeded the permissible 60 days for filing the disallowance. The Carrier insists that the Carrier received the claim on July 11, 1994 and therefore filed a timely disallowance on September 6, 1994. The record contains conflicting evidence on this matter. The Organization, as the party seeking to bar consideration of the merits of the claim, has the burden to prove that the Carrier issued an untimely disallowance. In the context of the conflicting evidence, the Organization failed to meet its burden of proof. As a result, the claim shall be found to be timely.

With respect to the merits, the record indicates that the Claimant, who provided flag protection at the site of a derailment, worked 41.5 hours before the Carrier released him. The record contains sufficient credible evidence that the Carrier decided to relieve the Claimant from duty because the Claimant required rest after having worked for the 41.5 hours. The record supports the finding that the opportunity for the Claimant to rest constituted the reason for the Carrier's action because of the significant safety implications of having an employee, such as the Claimant, working for additional hours without rest in a safety sensitive position. In reaching this finding, the record omits any credible evidence that the Carrier's action occurred for the purpose of absorbing overtime. This determination is virtually identical to the decision in the Third Division Award 31595 (Eischen). Under these special circumstances, the Award shall indicate that the claim is denied.

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


Patricia A. Madden
Carrier Member

Dated: 12/3/98