

SPECIAL BOARD OF ADJUSTMENT NO. 1110

Award No. 28

Case No. 28

PARTIES TO THE DISPUTE:

BROTHERHOOD OF MAINTENANCE 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 assigned Foreman W.F. Jackson to patrol track on October 24, 25, 26, and 31, 1994, instead of assigning cut-back Foreman C. L. Curtis [System File 14 (108) (94)/12(95-0430) LNR].
2. As a consequence of the violation, cutback Foreman C.L. Curtis shall be allowed forty (40) hours pay at the track inspector's straight time rate and five hours' pay at the track inspector's time and one-half rate.

FINDINGS:

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

1. That the Carrier and Employees involved are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended, and;
2. That the Board has jurisdiction over this dispute.
3. That Claimant C.L. Curtis has established and holds seniority as a Foreman Machine Operator and Laborer. He was regularly assigned to a machine operator position on Gang 5N76 working ten (10) hours per day, Monday through Thursday, with Friday and Saturday designated as rest days. Employee W. F. Jackson has established and holds seniority as a Foreman, but is

junior to Claimant. At the time of the incident, W.F. Jackson was working as a Foreman. Mr. C.H. Tankersley has established and holds seniority as a Foreman.

4. On the dates relevant to this dispute, Mr. Tankersley was regularly assigned to a Foreman/Track Inspector position. Mr. Tankersley took vacation on October 24, 25, 26 and 31, 1994 creating a temporary vacancy. The Union asserts that under Rule 22 (c), the Carrier was obligated to fill the temporary vacancy by assigning the appropriate qualified senior employee holding seniority as a foreman who was currently in cut-off status, which was at that time Claimant. The Union asserts that the Carrier never disputed Claimant's superior seniority or his qualifications to perform the work.

5. The Carrier asserts that the Organization failed to meet the necessary burden of proof to justify the claim as track inspection is not exclusive work to any position. The Carrier points to evidence that Machine Operator W.F. Jackson worked and was paid the same rate of pay as Claimant on the dates in question. The Carrier argues that the Organization failed to provide the details of how the track inspection work belonged only to a Foreman's position and that Claimant was contractually entitled to work the Foreman's position or be compensated at the higher rate of pay. The Carrier asserts that without such evidence, the claim must fail.

6. The Carrier further argues that the function of inspecting track has been performed by multiple classes of service within and outside the Maintenance of Way craft throughout the history of railroads without additional compensation. Finally, the Carrier argues that Claimant was under pay and thus not deprived of any loss of earnings or damaged as a result of the Carrier's action.

OPINION:

The Board is persuaded that the Carrier's action in assigning Foreman W.F. Jackson to patrol track on the dates set forth in the claim did not violate Rule 22 (c). The Board is persuaded that the Carrier is correct in asserting that neither Foremen nor Machine Operators have the sole right to track inspection work.

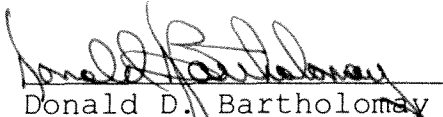
The Board notes that, historically, track inspection work has been performed by a wide variety of employees who occupy an array of employment positions.

AWARD:

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



E. William Hockenberry
Chairman and Neutral Member



Donald D. Bartholomay
Employee Member



Patricia A. Madden
Carrier Member

Dated: OCT 25 1999