

SPECIAL BOARD OF ADJUSTMENT NO. 1110

Award No. 29  
Case No. 29

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 an Assistant Roadmaster or an employee from the Henderson Seniority District to service and repair rail oilers on the SD Seniority District instead of assigning furloughed Rail Lubricator Attendant M.A. Boggess [System File 2(11)(94)/12(95-0395) LNR].

2. As a consequence of the aforesaid violation, furloughed Rail Lubricator Attendant M.A. Boggess shall:

Be paid 8 hours straight time for each work day back 60 days then forward and continuous until this violation stops at the Rail Lubricator Attendant's rate of pay. Claim is also made that this position be readvertised on the SD Seniority District.

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 in 1993, the Carrier added a new operating division, the Louisville Division, and subsequently rearranged the Rail Lubricator Attendant positions on the Chicago Division.

4. In 1993, there were three rail lubricator positions on the Chicago Division; one (1) position serviced oilers on two seniority districts, the SD Subdivision of the L&N, and the CD&E of the C&EI. In late 1993, the Louisville Division was created and two rail lubricator attendant positions were transferred from the Chicago Division to the new division. The third position remained on the Chicago Division servicing oilers on the HD Subdivision of the L&N.

5. In June 1994, Claimant's position was abolished because the Organization would not agree to have the position continue working on both the L&N and C&EI Seniority Districts and a new position was created for servicing oilers on the C&EI only. From June 1994 through January 1995, there were no Rail Lubricator Attendant positions for the SD Subdivision. During that time, rail oiler machinery was maintained by local SD forces rather than by an attendant. The Organization contends that this was a violation of the Agreement.

6. At the time the Organization filed the claim, the Parties were negotiating a floating rail oiler attendant position on the Chicago Division to maintain oilers on both the HD and SD Subdivisions. When agreement was reached, the position was readvertised in January and awarded in February 1995.

7. The Organization argues that Claimant Boggess established and holds seniority as a Rank 4 Rail Lubricator Attendant in the track Subdepartment in the SD Seniority District. The Organization asserts that approximately four months prior to the date the dispute arose, Claimant's position was abolished and he was furloughed. The Organization asserts that Claimant complied with Rule 21(g) and was awaiting recall to the Carrier's service when the dispute arose. The Organization acknowledges that on November 21, 1994, the Parties agreed to amend the Schedule Agreement and establish a "floating" Rail Lubricator Attendant position to work over three seniority districts.

8. The Organization claims that instead of rebulletining and

assigning Claimant's former position as rail lubricator attendant in accordance with Rules 14, 15 and 16 of the Agreement on September 12, 1994, the Carrier assigned Assistant Roadmaster L. Macon or an employee from the HD Seniority District to service and repair oilers on the SD Seniority District.

9. The Organization asserts that the Carrier does not dispute that Assistant Roadmaster Macon or an employee with seniority confined to the HD Seniority District performed rail lubricator attendant work on the SD Seniority District from September 12, 1994 and continuing. The Organization argues that the Carrier's assignments were made without any attempt to recall Claimant from furlough to perform the work contractually reserved to him by virtue of his seniority on the SD Seniority District and the clear and unambiguous language of the rules.

10. The Organization further argues that Assistant Roadmasters are supervisory personnel as contemplated by Rule 2 of the Agreement and are expressly excluded from the Scope of the Schedule Agreement and have absolutely no contractual right to perform work reserved to qualified employees covered by the Agreement.

11. The Carrier counters that while no rail lubricator position existed on the SD Sub-division, the Organization has nonetheless failed to prove a violation of the Agreement. The Carrier argues that the Organization has failed to prove that maintaining and servicing rail oilers is the exclusive work of Rail Lubricator Attendants or that the Carrier is required to have a rail oiler attendant position on every seniority district. The Carrier points out that Rule 5, the only rule cited by the Organization which even mentions "Rail Lubricator Attendant", merely lists the position as a Rank 4 position.

#### OPINION:

The Board is persuaded that the Organization has failed to demonstrate a violation of the Agreement by the Carrier. Nothing in the Agreement indicates that maintaining and servicing rail oilers is reserved to Rail Lubricator Attendants. Accordingly, the Carrier's use of local SD employees rather than a rail lubricator

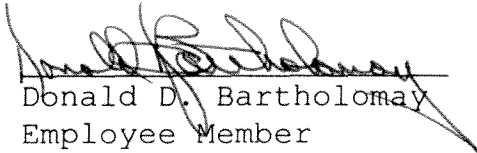
attendant to maintain the rail oiler machinery during the period June 1994 through January 1995 did not violate the Agreement.

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