

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 106
Case No. 106

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 Carrier violated the Agreement when it assigned Bridge and Building Subdepartment employes, **Messrs.** C. E. Robinson and T. McClure, to perform Track Subdepartment work (flag protection for the cutting of a grade for a new siding) near Latonia, Kentucky between Mile Posts T-102.2 and T-104.1 from July 21 through September 5, 1997 and continuing [System File **8(89)(97)/12(97-2760)** LNR].

2. As a consequence of the violation referred to in Part (1) above, "... R. W. Reed should be allowed the difference between Rank No. 4 and Rank No. 2 rates of pay for eight (8) hours straight time for each date of July 21, 22, 23, 24, 25, 28, 29, 30, 31 August 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, September 2, 3, 4 and 5, 1997. **Mr.** Reed should also be allowed four (4) hours time and one-half for each of the above mentioned dates at Assistant Foreman - Flagging respective time and one-half rate of **pay.**"

FINDINGS:

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

1. That the Carrier and the Employees involved in this dispute 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.

OPINION OF THE BOARD:

The present dispute involves a flagging assignment performed by Bridge and Building Subdepartment employees instead of by Track Subdepartment employees. The Agreement reflects different categories of employees, who historically and customarily perform different assignments.

The record indicates that the parties entered a Memorandum of Agreement, dated April 29, 1987, that addresses flagging protection. The Flagging Agreement provides, in pertinent part, that:

It is hereby agreed that when flagging positions are advertised to Maintenance of Way Employees, such positions will be advertised as "Assistant Foreman - flagging" with a rate equivalent to that of Fence Gang Foreman. It is further agreed that positions requiring flagging protection at various locations will be advertised as floating positions.

When flagging protection is required on bridges where work is restricted to the bridge, positions of Assistant **Foreman-Flagging** will be advertised to employees of the B&B Subdepartment.

The Flagging Agreement distinguishes between the track area and the bridge area. In doing so, the Flagging Agreement incorporates the longstanding seniority arrangement inherent in the subdepartment structure that the parties developed over an extended period of time.

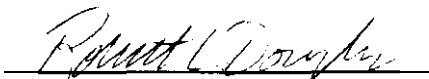
The special circumstances of the present dispute reflect that the Carrier needed to make a transition between the prior performance of certain bridge construction work and the use of an outside concern that subsequently performed the work of cutting a grade for a new siding. The record omits any basis for deviating from the presumptive validity and integrity of the subdepartment arrangement. A period of ten days constitutes a reasonable period of time for the Carrier to effectuate such a transition that preserves the presumptive validity and integrity of the subdepartment arrangement. After the expiration of the period of ten days, the Carrier therefore had the obligation to shift the


performance of the flagging protection to members of the Track Subdepartment.


As a remedy for the Carrier's failure to assign the disputed work to employees in the Track Subdepartment in a timely manner, the Carrier shall compensate the Claimants for the period that followed the expiration of the period of ten days. The remedy in the present case therefore shall cover the period beginning on August 1, 1997 and ending on September 5, 1997.

AWARD:

The Claim is sustained in accordance with the Opinion of the Board. The Carrier shall make the Award effective on or before 60 days following the date of this Award.


Robert L. Douglas
Chairman and Neutral Member


Donald D. Bartholomay
Employee Member


Mark D. Selbert
Carrier Member

Dated: 8/15/01