

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 109
Case No. 109

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 assigned a Trainmaster and Operating Department employees to perform Maintenance of Way work (switch repair) at **Mile Post 386.5** in the Boyles yard at Birmingham, Alabama on February 2 and 3, 1998 to the exclusion of Foreman P. D. Blackwood and Track Repairmen H. Hunter and M. L. Munn [System File **17(3) (98) /12(98-1124) LNR**].
2. As a consequence of the violation referred to in Part (1) above, **"Mr. Blackwood and Mr. Munn should be paid 2 hours and 40 minutes overtime each for February 2, 1998 at their respective rates of pay. Mr. Blackwood and Mr. Hunter should be paid 2 hours and 40 minutes each for February 3, 1998 at their respective rates 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 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 about the performance of scope covered work by Trainmaster and Operating Department employees, who did not possess active seniority under the Agreement in the Track Subdepartment.

A careful review of the record indicates that the first disputed work occurred between 12:00 midnight and 6:00 a.m. on February 2,

1998 after a **"run through"** to a switch in a departure yard. The parties do not dispute that a **"run through"** makes switches unsafe and requires remedial action before trains may safely continue to operate in the particular area.

The record further reveals that the second disputed work occurred between 12:00 midnight and 6:00 a.m. on February 3, 1998 and involved minor adjustments to a switch to enable the use of the lead track without any reverse movements.

In both instances covered employees performed the proper repairs shortly after the Trainmaster and Operating Department employees had done the disputed work.

The Third Division addressed a similar situation between the same parties and reasoned, in pertinent part, that:

We find that the work performed by the Trainmaster was de **minimis** and incidental to his job duties. See Third Division Awards 10703 and 2392, the latter of which reads, in **part**, as follows:

The Board recognizes the necessity of protecting the work of signalmen as it does any other group under a collective bargaining agreement. but this does not mean that the simple and ordinary work that is somewhat incidental to any position or job and requiring little time to perform, cannot be performed as a routine matter without violating the current Agreement.

. . . .

The contentions of the Organization attempt to draw too fine a line and tend to inject too much rigidity into railroad operation when a reasonable amount of flexibility is essential to the welfare of both the employees and the carrier.

(Award No. 30968 at 2 (July 26, 1995) (Benn, Referee).)

Similar facts exist under the precise circumstances of the present matter. In particular, the disputed work involved a truly minimal amount of work; the performance of such work on a temporary basis in a timely manner significantly reduced the risk that injuries might occur to personnel employed by the Carrier;

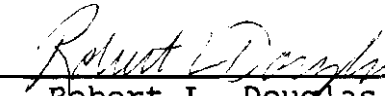
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the performance of such work constituted incidental work to the work normally and customarily performed by the personnel who performed the disputed work; and the members of the bargaining unit performed the proper repairs within a very short period of time after the disputed events.

Under these special and unusual circumstances, the Claim is dismissed.

AWARD:

The Claim is dismissed.


Robert L. Douglas
Chairman and Neutral Member


Donald D. Bartholomay
Employee Member


Mark D. Selbert
Carrier Member

Dated: 8/15/01