

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 120  
Case No. 120

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

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

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned junior Trackman S. S. Wampler to a Track Sub-division rail lubricator attendant position by Bulletin No. MON 0001 dated March 2, 1998, instead of assigning senior Trackman S. Truax [System File 98253-TM/12 (98-1125) MNN].
2. As a consequence of the violation referred to in Part (1) above, Claimant S. Truax shall be compensated for all straight time and overtime at the applicable rail lubricator attendant's, rate of pay and he shall receive all expense allowances related to said position beginning March 2, 1998 and continuing until the violation is corrected.

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:

Rule 6 (Assignments) provides, in pertinent part:

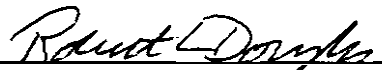
(a) Vacancies or new positions will be filled first by employees holding seniority in the rank in which the vacancy or new position occurs; if not so filled, they will then be filled by qualified employees in other ranks in that seniority group in accordance

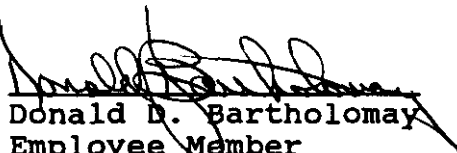
with Rule 8, except as provided for in Paragraph (b) of this rule. In the event the vacancy or new position is not so filled by employees in the seniority group in which it occurs then it will be filled by qualified employees from other seniority groups in the respective sub-division before employing new men. Employees assigned will retain their seniority rights in their respective groups from which taken.

A careful review of the record indicates that Rule 6(a) contains an arguable ambiguity concerning the proper approach for the Carrier to fill a temporary position such as the disputed position in the present matter. The record reveals that the Organization acknowledged the Carrier's previous approach in similar circumstances. The Organization therefore failed to refute the purported past practice described on the property by the Carrier in which the Carrier previously had filled such temporary vacancies in the same manner that gave rise to the present dispute. In the absence of any rule or rules cited by the Organization during the handling of the dispute on the property to refute the alleged past practice, no basis exists to resolve the ambiguity in favor of the Organization. As a result, the Organization failed to prove that the Carrier had violated the Agreement under these precise circumstances.

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

  
Mark D. Selbert  
Carrier Member

Dated: -6-01