SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 138
Case No. 138

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

CSX Transportation, Inc.

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated Appendix No. 34 of the Agreement when it allowed Welder R. K. Orr and Welder's Helper Pinkley to perform Track Repairman's duties (spacing of ties in preparation for field welds) between M.P. 8.3 and M. P. 75.0 on the Nashville Division on February 1, 2, 3, 15, 16 and 18, 1994. [System File 14(20)(94)/12(94-635) LNR].

2. As a consequence of the aforestated violation, Nashville Division Track Repairmen R. K. Allen and R. A. Foster shall be paid eight (8) hours straight time pay at their appropriate Track Subdepartment rate for each day during the month of February 1994 that the violation occurred.

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:

Appendix 34 provides, in pertinent part, that:

> in the future on all Seniority Districts of this Company when field welds are being made a track repairman will be assigned to work with the welding gang to perform the track work unless the ties have already been spread to permit the field weld and that we will not be presented time claims that the welding gang is performing track sub-department work

and also time claims that the track repairman is performing welding sub-department work.

This dispute involves an allegation about the performance of scope covered work by a Welder and a Welder Helper, who did not possess active seniority under the Agreement in the Track Subdepartment. The Welder and the Welder Helper did possess active seniority under the Agreement in the Welding Subdepartment.

Rule 3 and Rule 5 differentiate between the Track Subdepartment and the Welding Subdepartment. Employees covered by the Agreement accrue seniority in such different subdepartments.

The critical inquiry therefore requires a determination of whether the Welder and Welder Helper performed track work incidental to their primary work of welding or whether they performed a substantial and significant quantity of track work that warranted the assignment of the Claimants from the Track Subdepartment to perform such work.

A careful review of the record reflects that Welder Orr alleged that he and a Welder Helper had performed the disputed work. Welder Orr, however, did not indicate the specific nature and the specific quantity of such disputed work. The record confirms that Welder Orr had received instructions to perform certain work that included making certain field welds. In doing so, Welder Orr performed some Track Repairman's work.

In the absence of any clearer delineation of the time spent on performing Track Repairman's duties and under these special circumstances, only the Senior Claimant shall receive one hour pay at the straight time rate for each date specified in the Claim. The Award shall so provide.

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: 10-1-01