

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 139
Case No. 139

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 Welders R. K. Orr and M. R. Pinkley to perform Track Repairman's work (spacing of ties, pulling and redriving spikes, knocking off and reapplying anchors and tamping ties) while making field welds on June 1, 2, 8, 9, 10, 13, **14**, 16, 21, 22, 24, 27, 28 and 29, 1994 between Mile Post 6.5 and Mile Post 116.5 on the Nashville Division. [**System File 14(47)(94)/12(94-867) LNR**].

2. As a consequence of the aforestated violation, furloughed Track Repairman G. L. Hedge and furloughed Track Repairman R. A. Foster shall each be allowed eight (8) hours straight time pay at their appropriate Track Subdepartment rate for each day during the months of June 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 Welders 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 Welder Helper Pinkley had performed the disputed work. Welder Orr indicated the specific nature of the disputed work.


The record confirms that Welder Orr had received instructions to perform certain work that included making certain field welds. In performing such work, the record substantiates that Welder Orr and Welder Helper Pinkley also performed the disputed Track Repairman's work.


The record establishes that the performance of such work occurred. By permitting the Welder and Welder Helper to perform the disputed work, the furloughed Claimants lost certain work opportunities. As a result, the Claimants shall receive an equal proportionate share of 8 hours' pay (i.e. 4 **hours'** pay for each of the two Claimants) at the Track Repairman's straight time rate of pay for each date that the violations occurred in June 1994.

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