

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 143
Case No. 143

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 his Helper to perform Track Repairman's duties (removing angle bars, pulling and re-spiking ties, and spacing and tamping ties) while making field welds on the Memphis Subdivision between Mile Post 15.8 and Mile Post 110.8 on December 1, 2, 3, 6, 10, 13, 14, 20 and 21, 1993. [System File **14(4)(94)/12(94-295)** LNR].

2. As a consequence of the aforestated violation, Track Subdepartment employees C. R. Parker and J. W. Madden shall be paid eight (8) hours' straight time pay at their appropriate Track Subdepartment rate for each day during the month of December 1993 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 on the referenced dates. Welder **Orr**, however, did not indicate the specific nature and the specific quantity of such disputed work. The Division Engineer confirmed 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.


The record substantiates that Welder **Orr** was on vacation on December 20 and December 21, 1994. Welder **Orr's** absence on these two dates covered by the Claim eliminates any validity for a claim for these dates and undermines the accuracy of certain aspects of the remaining portions of the Claim.

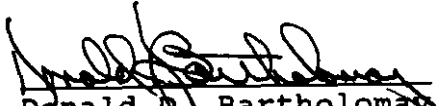
The record contains unrefuted evidence that Claimant Parker was on vacation on all of the relevant dates and therefore lacks a right to any compensation under the circumstances. In the absence of any clearer delineation of the actual time spent on performing Track Repairman's duties and under these unusual circumstances, only Claimant Madden shall receive one hour pay at the straight time rate for each of the remaining seven dates 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