

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 147
Case No. 147

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

CSX Transportation, Inc. (formerly The Baltimore
and Ohio Railroad Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it used Brakeman/Conductor R. Hoburn and other Transportation Department employees to perform Maintenance of Way work (build a table at the Safety Palace) in the Connellsville Yards on the Pittsburgh East Seniority District on December 16 and 17, 1997. [System File B-TC-3001/12(98-0969) BOR].
2. As a consequence of the violation referred to in Part (1) above, furloughed Claimant L. A. Johnson shall be allowed pay ". . ." for 16 hours at Carpenter rate of pay, plus credit with days for vacation qualification, credited with the month of December 1997 for retirement, credited with days for Feb 7 Section II guarantee and all other benefits, account of the aforementioned rule violations.

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:

The Scope Provision provides, in pertinent part, that:

(a) These rules govern the hours of service and working conditions of all employees in the Maintenance of Way and Structures Department, and the following classes of employees in the Transportation Department, subject, however, to the exceptions provided in paragraph (b) of this rule:

- Cleaning Gang Laborers (Baltimore Terminal).
- Bridge Watchmen.
- Crossing Watchmen.
- Cut Watchmen.
- Lampmen (Lamp Tenders).
- Pumpers.
- Water Treating Plant Attendants at other than engine terminals.
- Targetmen (except at Zanesville, Ohio).

(b) This Agreement does not apply to:

1. Bridge, Maintenance, Scale or Tunnel Inspectors.
Master Carpenters.
Track Supervisors and Assistant Track Supervisors.
General Foremen.
Other supervisory employees of equal or higher rank.
2. Clerical and Civil Engineering forces.
3. Signal Department forces.
4. Employees, as of the effective date of this agreement, covered by agreements with other Labor Organizations.
- 5.(a) Work which is to be performed under contracts let by the Company under any one or more of the following circumstances:
 1. By reason of the magnitude of the project.
 2. Because of the requirement of special skills necessary in connection with performance of the work.
 3. Where equipment or facilities to be used in connection with the work are not possessed by the Company and available, consistent with requirements for a particular project.
 4. Where the work with Company forces would limit the extent of the supplier's guarantee.
 5. The time within which the work must be completed as related to other projects.
 6. Employees covered by the agreement on the seniority district involved cannot be assigned to the work without impeding the progress of other projects.


A careful review of the record indicates that members of a multi-craft safety committee performed the disputed work during their own time and with their own materials. The record omits any evidence that any representative of the Carrier had directed any of the personnel to perform the disputed work or that any representative of the Carrier had participated in the activity in any manner.


Based on the present record, no credible evidence exists that any personnel performed Maintenance of Way B&B Carpentry work within


the meaning of the Scope Provision. As a result, insufficient credible evidence exists to substantiate that a violation occurred under the special circumstances reflected in the record.

AWARD:

The Claim is dismissed.


Robert L. Douglas
Chairman and Neutral Member


Donald D. Bartholomay
Employee Member


Mark D. Selbert
Carrier Member

Dated: 8-1-01