

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 153
Case No. 153

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 Agreement was violated when the Carrier assigned Welder Foreman L. D. Macon to perform the duties of a welder helper at the Rail Welding Plant at Nashville, Tennessee on dates beginning July 6, 1999 through August 10, 1999 and continuing instead of Welder Helper R. T. Simmons [System File B020900599/12(99-867)].
2. The Agreement was violated when the Carrier assigned Welder Foreman L. D. Macon to perform the duties of a welder on the 'B' line in Radnor Yard in Nashville, Tennessee on August 25, 1999 and in the Rail Welding Plant on September 1, 2 and 3, 1999 instead of Welder C. W. Norcross [System File B020900899/12(99-872)].
3. As a consequence of the violation referred to in Part (1) above, Welder Helper R. T. Simmons shall now be compensated for eight (8) hours' pay at his respective straight time rate of pay for '*** each date of July 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 26, 27, 28, 29, 30, August 9 and 10, 1999, and 4 hours straight time for July 22, 1999. This claim shall continue and include all future dates and hours until such time as this violation stops.
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4. As a consequence of the violation referred to in Part (2) above, Welder C. W. Norcross shall now be compensated for twenty-seven and one-half (27.5) hours' pay at his respective straight time rate of pay and for thirty (30) minutes' pay at his respective time and one-half rate of pay.

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 1 (Seniority Classes) provides, in pertinent part:

The seniority classes and primary duties of each class are:

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Welding Department

A. Welder Roster:

1. Welder Foreman-Includes Track and Structural Welder Foremen
Direct employees assigned under his jurisdiction.
2. Welder-Includes Track and Structural Welders
Perform welding of track and appurtenances.
3. Welder Helper-Includes Track Helpers and Structural Helpers
Assist Welder.

Rule 3 (Selection of Positions) provides, in pertinent part:

Section 3. Advertisement and award.

(a) All positions and vacancies will be advertised within thirty (30) days previous to or within twenty (20) days following the dates they occur. The advertisement shall show position title, rate of pay, headquarters, tour of duty, rest days and designated meal period.

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(i) All vacancies must be filled or proper abolishment notice posted.

Section 4. Filling temporary vacancies

(a) A position or vacancy may be filled temporarily pending assignment. When new positions or vacancies occur, the senior qualified available employees will be given preference, whether working in a lower rated position or in the same grade or class pending

advertisement and award. When furloughed employees are to be used to fill positions under this Section, the senior qualified furloughed employees in the seniority district shall be offered the opportunity to return to service. Such employees who return and are not awarded a position or assigned to another vacancy shall return to furlough status.

Rule 1 of the Agreement, effective June 1, 1999, explicitly refers to "primary duties" within the Welding Department. By doing so, the parties certainly recognized that the members of the Welding Department could perform duties other than their primary duties. No persuasive evidence exists that Rule 1, Rule 3, or any other provision of the Agreement, effective June 1, 1999, precluded the Welding Foreman from performing the disputed work to the quite limited extent set forth in the record. The disputed work therefore did not replace, supplant, or supersede the primary duties of the Welding Foreman under these particular circumstances. Thus no persuasive evidence exists in the record that the Carrier violated the Agreement in the present matter.

AWARD:

The Claim is denied.


Robert L. Douglas
Chairman and Neutral Member


D.D. Bartholomay
Employee Member


~~James T. Klement~~
Carrier Member

Dated: 3-5-04