

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 58
Case No. 58

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and

CSX Transportation, Inc. (Former Seaboard Coast
Line Railroad Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier failed to bulletin the vacant apprentice foreman position on Section Force 5FA3 when it was vacated by K.R. Radford on April 22, 1996. [System File 22(19)(96)/12(96-1258) SSV].
2. As a consequence of the aforesaid violation, furloughed employee C.G. Rhodes shall ' . . . now be compensated at the appropriate Track Subdepartment, Group A, rate of pay starting on April 22, 1996 and continuing until he is allowed to fill this vacant position in accordance with the Rules, plus any and all additional loss suffered as a result of the Carrier's actions.'

FINDINGS:

This Board, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees 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 8, Section 1 provides, in pertinent part, that:

(a) All vacancies and new positions, temporary or permanent, that are expected to last more than thirty (30) calendar days, will be bulletined for a period of twenty (20) calendar days within fifteen (15) calendar days previous to or ten (10) calendar days following the date the vacancies occur or new positions are established. Employees desiring to bid on these new positions or vacancies will file application with the official designated on the bulletin with copy to the General Chairman. Assignments to fill vacancies or new positions will be made within twenty (20) calendar days following the date set in the bulletin for closing the bids, and the successful bidder, the General Chairman and the Division Chairman representing the employees will be advised promptly who were appointed the positions covered by the bulletin. (See Appendix "J".)

(b) Bulletined vacancies and new positions that are not filled by assignments account of no bids received, or by new hires, within ninety (90) calendar days after the closing date of the bulletin, will be rebulletined at such time as the filling of same is contemplated.

The record indicates that the Carrier knew on April 22, 1996 that on April 29, 1996 Apprentice Foreman K. R. Radford would vacate the disputed position of Apprentice Foreman on Section Force 5FA3 in Davis Yard on the Wilmington Subdivision of the Florence Division.

The Carrier had an affirmative obligation to bulletin the vacancy from May 2, 1996 until May 22, 1996. The Carrier failed to do so.

Under the required schedule, the Carrier then would have had an additional twenty days to fill the vacancy, namely, until June 11, 1996. The Carrier, however, did not bulletin the position until June 21, 1996. The Carrier ultimately placed the successful bidder in the position as of June 21, 1996.

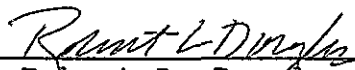
The Carrier did not afford the Claimant an opportunity to bid for the disputed position in a timely manner in accordance with the requirements of Rule 8, Section 1.

Under the totality of these circumstances, the Carrier shall compensate the Claimant for the lost earnings for the nine workdays during the period from June 11, 1996 to June 21, 1996. This period of nine days most appropriately remedies the Carrier's breach of the requirements set forth in Rule 8, Section 1 concerning the procedure that applies to bulletining vacant positions and new positions.

AWARD:

The Claim is sustained in accordance with the Opinion of the

Board. The Carrier shall make the Award effective on or before 30 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: November 2, 2000