

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 66
Case No. 66

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 the Agreement when it abolished the positions on SPG Gang 6XC1, effective December 4, 1997, without furnishing proper five (5) working days' advance written notice [System File 21(1)(98)/12(98-0006) CSX].

. . . .

18. As a consequence of the violation referred to in Part (1) above, Claimants . . . shall each be allowed twenty hours' pay at their respective straight time rates.

(To avoid redundancy the Board has decided to omit each of the 34 individual claims and corresponding Claimants and hereby adopts as accurate such information as submitted by the Organization to the Board in this dispute.)

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 record indicates that the parties entered a Letter Agreement on September 28, 1993 that updated an arbitrated agreement

between the parties concerning the establishment of System Production Gangs to perform production work across former property lines or seniority districts.

The Agreement contains detailed provisions concerning the establishment of rosters, bulletining and filling positions, filling vacancies, filling vacancies pending bulletining and assignment, the form of bulletin, the work week, overtime, lodging, meal allowance, work site reporting, travel allowance and travel advance, national agreements, rates of pay, special rule concerning holidays, claims and grievances, emergency conditions, vacation credits, seniority, work force stabilization, an oversight committee, a non-discrimination clause, labor protection, and the duration of the Agreement.

The preamble of the Agreement provides, in pertinent part, that:

For the purposes of this agreement, production work that may be performed by a SPG, is confined to the following work activities: tie installation and surfacing, surfacing, and rail installation. This definition, however, does not limit the Carrier's right to utilize non-SPG gangs to perform these work activities nor does it limit the Carrier's right to propose and reach mutual agreement that other production work be performed by SPG's in the future.

Section 12 of the Agreement provides:

When not in conflict with the provisions of this agreement, terms and conditions of employment on SPGs not specifically stipulated herein shall be governed by the provisions of applicable National Agreement rules on the subjects of vacation, personal leave, bereavement leave, jury duty, union ship, holidays, force reductions, off-track vehicle accidents, and supplemental sickness benefits, as well as all of the health and welfare and wage and work rules contemplated by the various recommendations of PEB 219. Otherwise, terms and conditions on SPGs, such as discipline, etc., will be subject to the terms and conditions of the former Seaboard Coast Line Railroad Agreement with BMW. The exception to this rule is that the Discipline for Absenteeism Agreement applicable on the former C&O and B&O properties will be applicable to employees working on SPGs.

Rule 13, Section 1 of the Seaboard Agreement provides:

Five (5) working days' notice shall be given to employees affected before force reductions are made, with copy of notice to General Chairman, except as provided for in Article VI - EMERGENCY FORCE REDUCTION RULE, February 10, 1971 National Agreement:

The record indicates that the Carrier failed to provide the requisite five working days of advance notice before the Carrier abolished the referenced positions, which involved 645 employees on 17 System Production Gangs that worked until the end of the production season in 1997. The Carrier provided the notification to some of the Claimants on December 1, 1997. Some of the notifications indicated that the abolishment of the positions would occur at the end of the tour of duty on December 4, 1997 and that the employees would receive payments for an additional Safety Bonus Day. Certain other employees on SPG 6XR1 received notice that the abolishment of their positions would occur at the end of the tour of duty on December 5, 1997 and that the employees would receive payments for an additional Safety Bonus Day. The Claimants worked on December 1, 2, 3, and 4, 1997. Certain employees, including the employees on SPG 6XR1, worked an additional day at the overtime rate of pay on December 5, 1997. Virtually all of the Claimants received compensation for the Safety Bonus Day on either December 5 or December 8, 1997. The record omits any evidence that any employee did not receive pay for at least 40 hours for the week beginning on December 1, 1997.

The record indicates that the Claimants did not receive the referenced notification until after the beginning of the tour of duty on December 1, 1997. December 1, 1997 therefore did not count as one of the five working days of the mandated notification. As a result, a technical violation of the Agreement occurred because the Claimants did not receive the minimum advance notification of five working days.

Third Division Award 33642 (November 16, 1999) addressed a similar situation involving SPG Gang 5XT9:

The Board has ruled on several occasions that in order to be entitled to compensation for a violation of advance notice rules similar to Rule 13, Section 1, employees must demonstrate that they lost earnings during the five working days following the date on which they were notified that their positions were to be abolished. . . . Because the members of SPG 5XT9 did not lose any earnings on December 16, 19, 20, 21 and 22, 1994, they are not entitled to compensation for these

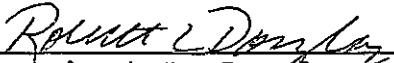
days even if they were not given the notice required by Rule 13, Section 1.

The record omits persuasive evidence that the Claimants suffered a loss of earnings on any of the five dates after December 5, 1997.

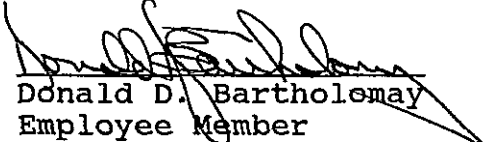
Under these special circumstances and to the limited extent set forth above, the claim shall be sustained. Other than the direction for the Carrier to comply with the rule in the future, no other relief is required.

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: Nov. 2, 2000