

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 69
Case No. 69

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and

CSX Transportation, Inc. (former Louisville and
Nashville Railroad Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it assigned Welder C. S. Levan and Welder Helper J. W. Broyles to perform track work (tamping track and gauging track) between Mile Posts C-311.3 and C-318 on the K&A Seniority District on November 5, 1995. [System File 7(15)(95)/12(96-267)LNR].
2. As a consequence of the aforestated violation, furloughed Track Repairmen M. A. Scates and B. W. Heatherly shall each be allowed ten (10) hours of pay at the track repairman's time and one-half rate.

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:

This dispute involves an allegation of 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 recall from furlough of the Claimants from the Track Subdepartment to perform such work.

The record specifies that the disputed work occurred on November 5, 1995 after a Geometry Car inspection had occurred during the week of October 30, 1995 to November 3, 1995. The record includes an undated letter from Welder Levan that indicates:

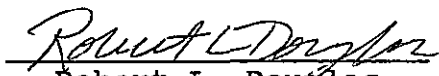
J.W. Broyles and I worked on geometry car defects tamping low spots and guaging [sic] track we used track jack ballast forks and shovels we worked 10 hrs overtime each on 11/5/95

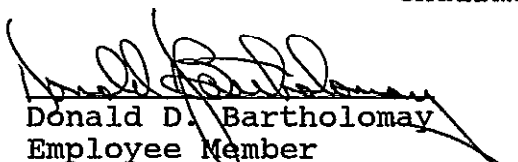
This specific letter from an actual participant omits any reference whatsoever to the performance of welding work. This statement is more persuasive than the Roadmaster's representation that the assigned employees did welding work. In addition, the Carrier failed to provide any written reports to rebut the statement from the Welder.

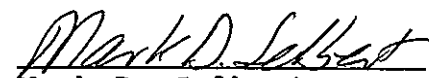
As a result, the controlling evidence fails to provide a basis to conclude that the Welder and the Welder Helper had performed track work incidental to their primary work of welding. The persuasive evidence therefore proves that the Welder and Welder Helper performed a substantial and significant quantity of track work. Under these circumstances the Carrier had an obligation to recall from furlough the Claimants from the Track Subdepartment to perform such work. With respect to the appropriate remedy, the Claimants shall be paid at the straight-time rate of pay. This analysis is consistent with the prior rulings of this Board in Awards 30 and 43 (October 25, 1999) (Hockenberry, Arb.).

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