

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 72  
Case No. 72

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 Agreement was violated when the Carrier assigned AFE Gang 6KAN employe R. D. Sneed to perform overtime service on December 9 and 10, 1995, instead of calling and using Machine Operator J. L. Brockett [System File 2(2)(96)/12 (96-322) LNR].
2. As a consequence of the violation referred to in Part (1) above, Machine Operator J. L. Brockett shall be allowed sixteen and one-half (16 ½) hours' pay at the machine operator'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:

Rule 30 (Overtime) provides:

- (f) The senior available men shall be given preference in the assignment of overtime work on their home sections.

The Claimant, who was stationed at the relevant location, took a vacation day on Friday, December 8, 1995. Nevertheless, the Claimant worked on December 8, 1995 in connection with snow removal until the Carrier directed the Claimant to go home. The

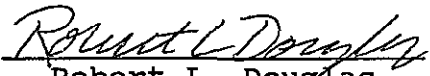
Carrier failed to offer the Claimant an opportunity to perform additional snow removal on his regular rest days, namely, December 9 or December 10, 1995. Instead, the Carrier assigned a junior employee from a traveling gang to perform the disputed work. The Carrier apparently considered the Claimant to be unavailable for overtime service on his rest days because he had scheduled December 8, 1995 as a vacation day. Insofar as the Claimant had participated in snow removal on his scheduled vacation day, the Carrier had an obligation pursuant to Rule 30(f) to offer the disputed snow removal overtime to the Claimant.

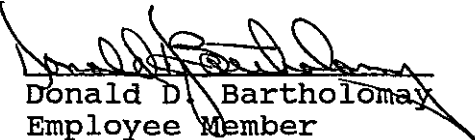
Furthermore, the record omits any evidence that the Carrier had notified the Claimant at any time in any manner about the possibility of performing the disputed work. As a result, the Carrier failed to rebut the Claimant's representation of his availability to perform the disputed work by proving that the Claimant either had declined to be considered to perform the disputed work or had remained silent when advised of the possibility of performing the disputed work.


Under these special circumstances the record proves that the Carrier violated the Agreement. As a result, the remedy sought by the Claimant shall be implemented.

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