

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 73
Case No. 73

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 allowed employees E. E. Coomer and Jerry Vincent to displace Track Repairman James A. Lindsay on November 27, 1995, without properly notifying him and the Carrier [System File 10(10) (95)/12 (96-0276) LNR].
2. Track Repairman James A. Lindsay shall now be allowed eight (8) hour's pay at the track repairman's straight time 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 21 (Force Reduction) provides, in pertinent part:

- (d) In the exercise of seniority by employes cut off or displaced the following procedure is to be adhered to:
- (1) When displacing is confined to the gang in which it occurs, the foreman will permit it, notifying the Division Engineer.
 - (2) If the cut-off or displaced man elects

to displace a junior man in another gang, he must notify the Division Engineer before the change is made.

(3) When immediate displacement is desired the request shall be handled by telegram.

A careful review of the record indicates that the Carrier permitted senior employees to roll onto Section 5K23 on November 27, 1995. It is undisputed that this action caused the displacement of the Claimant.

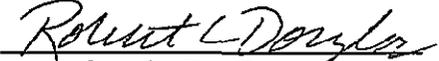
Although Rule 21 sets forth certain procedures for displacements, the parties have not adhered to the explicit requirements of Rule 21. For example, the record omits any evidence that the parties use telegrams as set forth in Rule 21(d)(3).

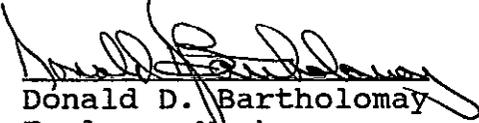
The parties argued that conflicting past practices exist for displacements from one gang to another gang. The Organization refers to an alleged practice whereby the Carrier or an employee, who will be displaced, must receive 24 hours of advance notice before the actual displacement occurs. In contrast, the Carrier maintains that an alleged practice exists whereby the Carrier or an employee, who will be displaced, merely must receive notice before the scheduled start of work. The parties also disagree about whether the Division Engineer must receive the notice or whether a different representative of the Carrier may receive such notice.

In the absence of a clear past practice and in the absence of persuasive evidence that the Claimant did not receive advance notice before the scheduled beginning of the normal work period, the Organization failed to prove that the Carrier violated the Agreement.

AWARD:

The Claim is dismissed in accordance with the Opinion of the Board.


Robert L. Douglas
Chairman and Neutral Member


Donald D. Bartholomay
Employee Member


Mark D. Selbert
Carrier Member

Dated: Nov. 2, 2000