

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 84
Case No. 84

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

CSX Transportation, Inc. (former Chesapeake and
Ohio Railroad Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned Welder Helper J. Sword to perform trackmen's work (repairing broken rails, handling materials, switch maintenance, smoothing track, etc.) on November 6 through 10 and November 27 through December 8, 1995 [System File C-TC-6206/12(96-0334) COS].
2. As a consequence of the aforesaid violation, furloughed Trackmen J. Potter shall be allowed one hundred twenty (120) hours' pay at his straight time rate and nine and one-half (9.5) hours' at his 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 Helper, who did not possess active seniority under the Agreement in the Track Subdepartment. The Welder Helper did possess active seniority under the Agreement in the Welding Subdepartment.

Rule 2, Rule 3, and Rule 66 collectively differentiate between the Track Subdepartment and the Welding Subdepartment. Employees covered by the Agreement accrue seniority in such different subdepartments.

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The critical inquiry therefore requires a determination of whether the Welder Helper performed track work incidental to the primary work of welding or whether the Welder Helper performed a substantial and significant quantity of track work that warranted the recall from furlough of the Claimant from the Track Subdepartment to perform such work.

The record includes an undated letter from Welder Helper J. Sword that indicates:

I would like to state the fact that I performed Trackman duties on the following dates. November 6 through 10 and November 27 through December 8, 1995. This being 120 hours straight time and 9 and $\frac{1}{2}$ hours time and one half as a Trackman. [I was a Welder Helper. But I did a Trackmans work on the above dates. I did not perform any welding on above dates.]

This specific letter from the actual participant omits any reference whatsoever to the performance of welding work.

The Welder Helper's statement, which contains the bracketed material in the original statement, is more persuasive than the Division Engineer's general representation that the Welder Helper did welding work *on* the relevant dates. The relevant payroll records contradict the Division Engineer's general representation, which omits any indication that the Division Engineer had direct knowledge of the events, because the payroll records contain payroll codes that omit any reference to welding work on the relevant dates. In addition, the Carrier failed to refer to any written reports in an explicit manner from any personnel directly involved in the disputed work to rebut the statement from the Welder Helper.

As a result, the controlling evidence fails to provide a basis to conclude that the Welder Helper had performed track work incidental to the primary work of welding on the relevant dates. The persuasive evidence therefore proves that the Welder Helper performed a substantial and significant quantity of track work.

Under these circumstances the Carrier had an obligation to recall from furlough the Claimant from the Track Subdepartment to perform such work.

This analysis is consistent with the prior rulings of this Board in Awards 30 and 43 (October 25, 1999) (Hockenberry, Arb.) and *in* Awards 69 and 71 (November 2, 2000).

AWARD:

The Claim is sustained in accordance with the Opinion of the Board. The Carrier shall make the Award effective on or before

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30 days following the date of this Award.

Robert L. Douglas
Robert L. Douglas
Chairman and Neutral Member

Donald D. Bartholomay
Donald D. Bartholomay
Employee Member

Mark D. Selbert
Mark D. Selbert
Carrier Member

Dated: 5/14/01