

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 87

Case No. 87

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Nay Employees

and

CSX Transportation, Inc. (Former Chesapeake and
Ohio Railway Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier failed and refused to assign SPG Trackman S. Gibson to fill the Class 'A' Machine Operator position on Force 5G87 beginning March 18, 1996 and continuing. [System File C-TC-6333/12(96-1013) COS].
2. As a consequence of the aforesaid violation, the Claimant shall be allowed the difference in pay between the SPG trackman's rate and the Class 'A' Machine Operator's rate for March 18, 19, 20, 21, 25 and 26, 1996 and thirteen (13) days' pay [eight (8) hours per day] at the Class 'A' Machine Operator's straight time rate for work performed on March 27 through April 16, 1996 with these days credited for vacation and retirement purposes.

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 Carrier decided to fill the disputed vacant position (tamper operator) on a temporary basis pending a bulletin assignment. The Carrier assigned a junior employee, rather than the Claimant, because the Claimant lacked a commercial driver's license.

The Carrier has a right to determine the qualifications for a

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position so long as a rational basis exists for such qualifications. In the absence of a rational basis for setting such qualifications, the Carrier necessarily acts in an arbitrary manner by insisting on such qualifications.

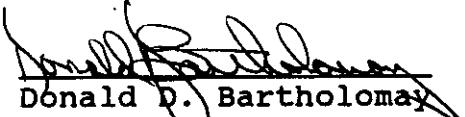
A careful review of the specific record in this dispute indicates that Force 5G87 did not have a truck and that the Carrier did not present any evidence whatsoever that Force 5G87 would have a potential need to use a truck during this particular period of time or that the Carrier required such flexibility in the event such a need occurred. As a result, the record omits any rational basis to justify the commercial driver's license requirement during the relevant time period. The Carrier therefore violated the Agreement in this particular instance by insisting that the Claimant have a valid commercial driver's license and by failing to assign the Claimant to the disputed position for this particular time period.


The record provides sufficient documentary evidence to prove that the Claimant served as a Machine Operator and received appropriate compensation for such work to the extent that the Claimant was available to work from March 27 through April 16, 1996. As a result, no monetary award is warranted for this period of time. The Carrier shall implement the remaining portion of the Claim.

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: 5/24/01