SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 90
Case No. 90

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 Car Shop employes to paint metal floor covers at the Tilford Yard Car Shop in Atlanta, Georgia on August 19, 1996 instead of assigning B&B forces assigned thereto [System File 44(33)(96)/12(97-166) LNR].

2. As a consequence of the aforesaid violation, B&B Foreman C. L. Wilson, Carpenter B. Ii. Wood and Carpenter Helper J. A. Lamb shall each be allowed eight (8) hours of pay at their respective 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 Employees involved in this dispute are, respectively, Carrier and Employees 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 1, Scope, provides, in pertinent part, that:

> **Subject to the exceptions in Rule 2, the rules contained herein shall govern the hours of service, working conditions, and rates of pay for all employes in any and all subdepartments of the Maintenance of Way**

and Structures Department, represented by the Brotherhood of Maintenance of Way Employes, and such employes shall perform all work in the maintenance of way and structures department.

Rule 2 contains.certain exceptions to Rule 1:

(d) Work of a character properly belonging to classes of employees covered by other agreements . . . .

Rule 3 groups employees in different subdepartments such as the Bridge and Building Subdepartment. Rule 4, Rule 5, and Rule 6 contain certain provisions concerning seniority.

Rule 41 provides, in relevant part, that:

(a) All Work which is done by Company forces in the construction, maintenance, repair, or dismantling of bridges, buildings, tunnels, wharves, docks, water tanks, turntables, platforms, walks, and other structures, build of brick, tile, concrete, wood, or steel, the painting of bridges, buildings, docks, platforms, walks, turntables, tanks and other structures, hand rails in buildings and on bridges, and the erection and maintenance of signs attached to buildings or other structures, shall be performed by employes of the bridge and building subdepartment.

. . . .

(g) Paint gangs shall consist of foreman, assistant foreman (when required by the management), painters, helpers and repairmen. Repairmen in a gang shall not be more than one-third of the total number of painters and helpers. Neither shall there be more helpers than painters.

In the context of the referenced Rules, the record proves that the Bridge and Building Subdepartment exists, in relevant part, for the purpose of establishing a group of employees to paint buildings. The present dispute involves a relatively limited painting assignment performed by Car Shop employees instead of by furloughed members of the Bridge and Building Subdepartment. In accordance with the referenced Rules, the disputed painting of metal floor covers constitutes core work typically performed by bargaining unit members such as the Claimants. Such work falls explicitly within the scope provision of the Agreement. As such, the present parties constitute the only parties necessary to resolve this disagreement. No basis exists to warrant the organization that represents Car Shop employees to be treated as an indispensable party to the present dispute.

The record omits any persuasive evidence that the use of bargaining unit members to perform the disputed painting function would have in any way complicated, disturbed, or undermined any key function of Car Shop employees. In contrast to painting rolling stock and in the absence of any other material information, the record fails to prove that the disputed work under these particular circumstances constitutes the core work of the Car Shop employees or arose as necessary incidental work that the Car Shop employees had an entitlement to perform to the exclusion of the Claimants. The record omits any suggestion that an emergency situation had existed regarding the painting.

The Organization's decision not to progress to arbitration different cases under different circumstances involving this particular subject did not preclude the Organization from progressing the present dispute to arbitration. As a result of such different prior circumstances, the approach of the Organization did not establish acquiescence or constructive acceptance by the Organization of the Carrier's position. In the absence of any such type of an estoppel, the Organization retained the right to enforce the clear, explicit, unambiguous, and mandatory provisions of the Agreement in the context of the present matter.

Due to the clarity of the Agreement regarding the disputed work,. any arguable past practice lacks relevance because a past practice becomes significant when an agreement is ambiguous, imprecise, or unclear. A past practice lacks relevance to change. a clear provision of an agreement. Any change to the meaning and proper application of a clear provision of the Agreement is a matter for collective bargaining, not arbitration.

In summary, the record omits any basis for deviating from the presumptive validity and integrity of the jurisdictional arrangement developed by the parties. The assignment of the disputed work under the circumstances of the present controversy therefore violated the fundamental jurisdictional arrangement inherent in the scheme developed by the parties over an extended period of time. As a result, the Carrier's actions in the present case constituted a violation of the Agreement.

The record substantiates that Claimant Lamb had become medically disqualified during the relevant period of time concerning the Claim. As a result, Claimant Lamb lacks an entitlement to the remedy sought by the Organization. In contrast, the record provides sufficient evidence to warrant the requested remedies for Claimant Wilson and Claimant Wood.

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

Dated: 5/14/01

Mark D. Selbert
Carrier Member