

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 99
Case No. 99

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 Trackmen P. L. Meadows and J. E. Nutter to operate Tie Handler TH 9407 and Tie Inserter TRI 9604, respectively, on Saturday, September 14, 1996 at Mile Post 5.8 on the New River Subdivision instead of assigning the regularly assigned machine operators [System Files C-TC-6450/12(97-0094) and C-TC-6449/12(97-0093) COS].

2. As a consequence of the violations referred to in Part (1) above, Machine Operator Floyd Duncan shall be allowed eleven and one-half (11½) hours of pay at his respective machine operator's time and one-half rate and Machine Operator A. B. Shelton shall be allowed nine (9) hours of pay at his respective 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 3 of the Agreement provides for seniority rosters to be maintained by groups and classes. Rule 3 sets forth a seniority roster for the Track Group and a different seniority roster for the Roadway Machine Operator Group. Rule 66 specifies that the employees in the Roadway Machine Operator Group "will be used to operate all of the so-called heavier machines used in the

performance of track and bridges and structures work"

A careful review of the record indicates that a derailment occurred on Friday, September 13, 1996 at Mile Post 5.8 on the Loup Creek industrial track. The Claimants served on Switch Tie Force 5G81 in close proximity to the area where the derailment occurred and worked Monday through Thursday with assigned rest days of Friday, Saturday, and Sunday. Claimant Duncan was assigned to the Tie Handler and Claimant Shelton was assigned to the Tie Inserter. The Roadmaster ultimately decided to begin repairing the derailment site on Saturday, September 14, 1996. Such a decision did not constitute the traditional type of pre-planned overtime that does not arise in the context of a derailment.

Instead of using Switch Tie Force 5G81 to perform the repairs, the Carrier assigned the necessary work to local forces and arranged for the local forces to use some of the equipment that the Carrier had assigned to the Claimants. The Claimants did not participate in performing the disputed work on either Saturday, September 14 or Sunday, September 15, 1996. The Claimants did participate in performing certain repairs as Machine Operators on Monday, September 16, 1996.

The critical inquiry therefore requires a determination of whether the employees assigned to the Switch Tie Force had a superior claim to perform the disputed work than the members of the local forces. The record contains sufficient evidence to substantiate that an emergency condition existed. The derailment occurred during the evening of Friday, September 13, 1996. It is undisputed that the referenced track was out of service until Monday, September 16, 1996. In emergency situations, the Carrier possesses greater discretion to make work assignments.

The record indicates that the members of the Switch Tie Force had regular assigned rest days on Friday, Saturday, and Sunday. No evidence exists that the Switch Tie Force had worked on the day of the derailment. The record therefore fails to prove that the Carrier lacked a right to assign the local forces, which had worked on the date of the derailment, to use the referenced equipment to meet the special pressures that develop in an emergency situation.

The absence of controlling authority on this precise issue underscores that the Carrier retained the discretion to make a reasonable determination to address the special needs that arose due to the emergency. The Agreement lacks any explicit provision that expressly prohibited the Carrier from exercising the discretion to assign the local forces to use the available equipment to address the special circumstances that arose in the context of the derailment. For these reasons the record fails to prove that the Carrier's actions under the emergency conditions

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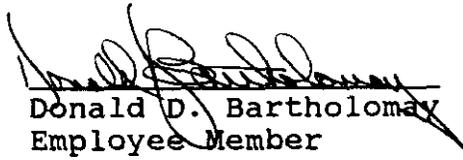
violated the Agreement.

AWARD:

The Claim is denied.



Robert L. Douglas
Chairman and Neutral Member



Donald D. Bartholomay
Employee Member



Mark D. Selbert
Carrier Member

Dated: a % & - -