

SPECIAL BOARD OF ADJUSTMENT NO. 1110

Award No. 31
Case No. 31

PARTIES TO THE DISPUTE:

BROTHERHOOD OF MAINTENANCE 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 Roadmaster J.R. Rich and Foreman T.L. Hardison to perform overtime service repairing a broken rail at mile Post F-331.0 on the Nashville Division, Memphis Subdivision on November 23, 1994, instead of calling Track Repairmen K. L. Frazee and L.L. Dickson to perform said work [System File 14(3)(95)/12(95-0619) LNR]
2. As a consequence of the aforesaid violation, Track Repairmen K.L. Frazee and L.L. Dickson shall each be allowed four (4) hours' pay at their respective time and one-half rates.

FINDINGS:

This Board, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and Employees involved 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.
3. That on November 23, 1994 Roadmaster Rich, upon a request by the Carrier, investigated and discovered a broken rail at Mile Post F-331.0 on the Nashville Division. He called Foreman T.L.

Hardison who immediately made temporary repairs to the right of way. The Organization thereafter filed a claim on behalf of K.L. Frazee and L.L. Dickson requesting that each be paid four (4) hours overtime for November 23, 1994 at the trackman's rate of pay.

4. The Carrier argues that it has a long-standing past practice of using supervisors to inspect track and perform necessary minor emergency repairs detected during those inspections. The Carrier asserts that because of this past practice, there is no violation of the Scope clause.

5. The Carrier further argues that rail defects which may potentially affect train operations are accorded a high priority under FRA regulations due to safety concerns. The Carrier contends that the Agreement was not violated by the Carrier when the Foreman made immediate and temporary repairs. Citing authority, the Carrier argues that arbitral awards have recognized that supervisors may undertake emergency repairs.

6. The Carrier points out that the Organization attempted, in negotiations, to create the position track inspector in 1992; no agreement was reached because of the Organization's insistence on language that would restrict the Carrier's existing right to have supervisors make minor emergency repairs while inspecting track.

7. The Organization contends that under Rule 1, "all work in the Maintenance of Way and Structures Department" is reserved to employees represented by the Organization. The Organization claims that the Carrier has not and cannot dispute that track maintenance work such as drilling and splicing a broken rail is work in the Maintenance of Way and Structures Department; and there can be no question that such work is reserved to the "Track Repairman". The Organization asserts that at the time the claim arose, Claimants held seniority as track repairmen.

8. The Organization further argues that Rules 2 and 8 specifically prohibit supervisors from performing the work in question. The Organization asserts that such work has been performed by BMW-represented employees since the May 1, 1960 Agreement. Citing authority, the Organization contends that notwithstanding the Carrier's assertion that an emergency existed,

the NRAB sustained the Organization's claim in various awards where the Carrier assigned other than track repairmen to perform track repair work. The Organization further points out that when the parties executed a new collective bargaining agreement on October 1, 1973, Rules I and II were adopted virtually unchanged. The Organization asserts that throughout the 1970's and 1980's after the new collective bargaining agreement went into effect, truck drivers were assigned to perform, and did perform, track inspections and track work with supervisors.

9. The Organization contends that the Carrier never determined the availability of Claimants to perform the common ordinary track repairmen work involved here. The Organization contends that Claimants were contractually entitled to be called for such overtime service pursuant to Rule 30 (f). The Organization argues that the Carrier clearly violated the Scope of the Agreement when Roadmaster Rich worked as a foreman and Foreman T. L. Hardison was required to work as a track repairmen performing the common ordinary track repair work of fixing a broken rail.

10. The Organization contends that the clear and unambiguous language of the Agreement reserves the work in question to BMW-represented employees. The Organization further contends that the Carrier violated the Agreement when Roadmaster Rich, acting in a foreman's capacity called Foreman Hardison to act in the capacity of a track repairman and to fix the broken rail on Claimant's "home section". As to the Carrier's "emergency" defense, the Organization argues that the Carrier has failed to show that any emergency conditions existed on the morning in question. Citing authority, the Organization contends that a broken rail is not a per se "emergency". The Organization contends that there was no showing by the Carrier that the Claimants could not have responded to a call as promptly as Roadmaster Rich or Foreman Hardison. For these reasons, the Organization argues that Claimants are entitled to be compensated for the amount they would have earned had they been properly assigned to perform the overtime service.

OPINION:

The Board is persuaded that the record does not support the Carrier's position. The evidence does not support the Carrier's

assertion that the work was performed during a routine inspection of the track. On the contrary, the evidence shows that the Carrier called Roadmaster Rich to investigate alleged damage to the track, and that Roadmaster Rich then called Foreman T.L. Hardison to accompany him to the site. The Carrier asserts that "since [Foreman Hardison] was readily available and qualified to perform this work, he was contacted".

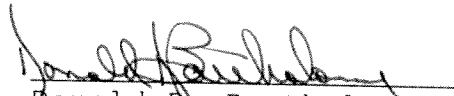
The Carrier's position is at odds with its obligation under Rule 30 (f) of the Agreement, which states that "senior available men shall be given preference in the assignment of overtime work". In short, there has been no showing by the Carrier that it would have taken Claimants, who were entitled to be called to perform this work under the Agreement, any longer to proceed to mile Post F-331.0 on the Nashville Division, Memphis Subdivision on November 23, 1994, and repair the broken rail. See Third Division Award Nos. 24584, 19840. Nor has the Carrier shown that Claimants were not available to make the necessary repairs. Accordingly, the Carrier's defense that the broken rail presented an emergency condition which had to be immediately repaired by Foreman Hardison is not supported by the evidence in the record.

Thus, supervisors may perform incidental repairs discovered during routine track inspections. The Board is not persuaded that, in this instance, the repair work was performed during the course of a supervisory track inspection. The evidence indicates that the Carrier was specifically alerted to the possibility of a broken rail. As such, it was aware of the existence of the defect absent any inspection. The Roadmaster, before visiting the site, contacted the Foreman to accompany him and effect the repairs. Such action violated the Agreement.

AWARD:

The Claim is sustained in accordance with the Opinion of the Board. Claimants Track Repairmen K.L. Frazee and L.L. Dickson shall each be allowed four (4) hours of pay at their respective time and one-half rates.


E. William Hockenberry
Chairman and Neutral Member


Donald D. Bartholomay
Employee Member


Patricia A. Madden
Carrier Member

Dated: OCT 25 1999