

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 35
Case No. 35

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and
CSX Transportation, Inc.

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it failed and refused to release employees D. W. Peters, J. N. Jordan and L. C. Cravey to their new positions within fifteen (15) calendar days of April 7, 1995 [System File 21(21)95/12(95-411) CSX].
2. As a consequence of the aforesaid violation, Claimants D. W. Peters, J. N. Jordan and L. C. Cravey shall each be allowed three hundred dollars (\$300.00).

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 record indicates that the parties entered into a Letter Agreement on September 28, 1993 that updated an arbitrated agreement between the parties concerning the establishment of System Production Gangs to perform production work without regard to former property lines or seniority districts.

The Agreement contains detailed provisions concerning the establishment of rosters, bulletining and filling positions, filling vacancies, filling vacancies pending bulletining and assignment, the form of bulletin, the work week, overtime, lodging, meal allowance, work site reporting, travel allowance and travel advance, national agreements, rates of pay, special

rule concerning holidays, claims and grievances, emergency conditions, vacation credits, seniority, work force stabilization, an oversight committee, a non-discrimination clause, labor protection, and the duration of the Agreement.

Section 18 of the Agreement provides, in pertinent part, that:

Employees Right to Exercise Seniority
Amended 9/28/93

- A. Employees assigned to SPG positions will have the right to bid and displace to other SPG positions, within their assigned SPG, other SPG's, or positions bulletined on their home road consistent with their existing rights under their home road agreement. SPG employees awarded a position on another SPG or a position on the employees home road will be released to the new positions within fifteen (15) calendar days following the awarding of the position.
- B. If the employee is not released to his new position within the fifteen (15) day period provided above, he shall receive three hundred dollars (\$300) per week held in addition to all allowances provided for herein, provided he has advised his Foreman of his assignment to such new position.

Section 18 expressly specifies that the release of employees from their current positions will occur "within fifteen (15) calendar days following the awarding of the position." The triggering event for the fifteen day period occurs on the date of "the awarding of the position" by the Carrier.

In the present case the Company awarded the relevant positions to the Claimants in an award bulletin on April 7, 1995. The Carrier therefore had fifteen days to effectuate the releases of the Claimants from SPG 6XT1 to SPG 6XS1. The relevant fifteen-day period ended on April 22, 1995. The Carrier, however, failed to comply with the fifteen-day requirement because the releases did not occur until April 25, 1995. As a result, the Carrier violated Section 18 of the Agreement.

The record omits any persuasive evidence that the collective bargaining agreement provided the Carrier with the right to differentiate between the award date of the position (April 7, 1995) and the effective date for the time of assignment (April 17, 1995). Section 18 only refers to the award date. The

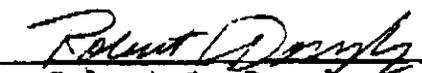
Carrier therefore must comply with the Section 18 requirement. The Carrier failed to do so under the precise facts of the present case. Any change to the contractual requirement is a matter for collective bargaining, not arbitration.

The Third Division determination in Award No. 31506 (May 23, 1996) (Richter, Referee) lacks persuasiveness because the record in that case indicated that the relevant position did not exist during the entire initial fifteen-day period. As a result, the reasoning in Award No. 31506 does not control the outcome in the present case.

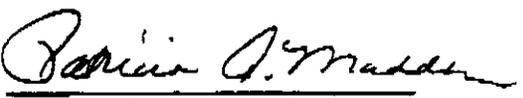
With respect to the requested remedy, Section 18(B) provides for a payment to a Claimant of "three hundred dollars (\$300) per week held" when a violation occurs of Section 18(A). In the present case the record indicates that the Carrier held the Claimants for only three extra days because the actual release occurred on April 25, 1995 instead of by April 22, 1995. Section 18(B) provides for a \$300 payment per week. The Claimants did not remain in their original positions for a full week. Section 18(B) omits any authorization to provide for a pro rata remedy and further omits any suggestion that the Carrier must make a \$300 payment for failing to release an employee for less than one week. As a consequence, the Union failed to prove that the Claimants had a contractual right to receive a \$300 payment under the special circumstances of the present case.

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


Patricia A. Madden
Carrier Member

Dated: 2-8-2000