

SPECIAL BOARD OF ADJUSTMENT NO. 1110

Award No. 44

Case No. 44

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 B&B employees from the K&A Seniority District to install cable over a bridge and install ballast curbs on April 6, 10, 11, 12, 13, 17, 18, 19 and 20, 1995 on the W&A Seniority District, instead of calling and using B&B employees F. E. Latimore, M. E. Moore, C. L. Wilson and J. A. Lamb who hold seniority on the W&A Seniority District [System File 4(20) (95)/12(95-0869) LNR].
2. As a consequence of the violation referred to in Part(1) above, B&B Carpenters F. E. Latimore, M. W. Moore, C. L. Wilson and Carpenter Helper J. A. Lamb shall be allowed the remedy set forth below:

J. A. Lamb	-	10 hours straight time April 6, 1995;
M. W. Moore and J. A. Lamb	-	10 hours straight time each date - April 10, 11, 13, and 19, 1995;
F. E. Latimore and J. A. Lamb	-	10 hours straight time each - April 12, 1995;
C. L. Wilson and J. A. Lamb	-	10 hours straight time each for each date - April 17, 18 and 20, 1995;
C. L. Wilson, M.W. Moore and J.A. Lamb.	-	10 hours straight time each - April 19, 1995

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. Claimants retain seniority on Carrier's W&A Subdivision Seniority District. On April 6, 1995, the Carrier temporarily transferred two Bridge & Building ("B&B") employees from the K&A Subdivision Seniority District for a project on the W&A District. The work consisted of installing a cable over the Etowah River Bridge, in support of a rail gang, and of installing ballast curbs.

4. The Carrier declined Claimants' claim on July 29, 1995 citing the Agreement was not violated as Rule 10(a) permits the Carrier to temporarily transfer employees into another district for a period not to exceed 49 days. The Carrier asserted that the Claimant's were fully employed, working within their own seniority district and were therefore unavailable for the work. The Carrier further contended that the Supervisor present did not perform "work" as alleged in the Organization's claim.

5. The Carrier asserts that the Claim should be dismissed for procedural reasons as the Claim is excessive and constituted at most a *de minimus* violation, even if the Agreement was violated. The Carrier further asserts that it acted properly when it temporarily transferred the two workers to the W&A Seniority District. The Carrier contends that Rule 10(a) clearly states that the Carrier has the right to temporarily transfer employees from one seniority district to another for a maximum of 48 days.

6. Finally, the Carrier argues that if the Agreement was violated, Claimants suffered no lost work opportunities. The Carrier points out that Claimants were working on their seniority district at the time.

7. The Organization argues that the Carrier assigned two employees who hold no seniority or contractual rights to work on the W&A Seniority District to perform regular B&B work on the bridge. The Organization argues that such work is customarily performed by the Claimants and reserved to the Carrier's Maintenance of Way Employees who have established and hold seniority in the Track Subdepartment confined to the W&A Seniority District.

8. The Organization points out that the assigned employees hold seniority on the K&A Seniority District. The Carrier violated Rule 4 which clearly establishes seniority district boundaries for the employees holding seniority. Rule 4, the Organization points out, confines employee's seniority rights to the district in which seniority is held.

9. As to the Carrier's Rule 10(a) defense, the Organization contends that Rule 10(a) specifically states individual employees or gangs will not be transferred out of their respective seniority districts to another district, except under the following conditions: "1. In emergency; 2. When there are no cut-off employees in the same class in the seniority district to which the transfer is made".

10. The Organization contends that none of the conditions set forth in Rule 10(a) existed to justify the Carrier's assignment of work to other than Claimants. The Organization asserts that the Carrier modified its defense into a "quasi-emergency defense" by asserting "the work which was performed was installing cable over a bridge in preparation for a Rail Gang. The Carrier does consider this an extremely important issue as it must be concerned for the safety of the Rail Gang employees as well as all employees".

11. As to the Carrier's argument that Claimants were "fully employed" and thus not entitled to recover the Organization claims that the NRAB Third Division Awards have rejected such a defense (NRAB Third Division Awards 29913 & 29914).

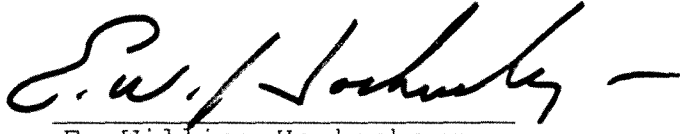
#### OPINION:

The Carrier has not shown the applicability of Rule 10(a) to

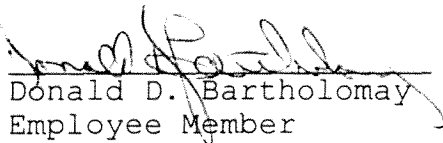
its assignment of employees from the K&A Subdivision Seniority District to perform the bridge work in dispute. The Carrier's belated assertion that the work involved "safety of workers" and thus brought its assignment within the scope of Rule 10(a)'s emergency exception is untenable. The record does not support that an emergency existed in respect to the installation of a cable over the Etowah River Bridge. The Board holds that Claimants were entitled to perform the work in question; the Carrier's action in assigning B&B members of the K&A Seniority District violated Rule 4 of the Agreement.

AWARD:

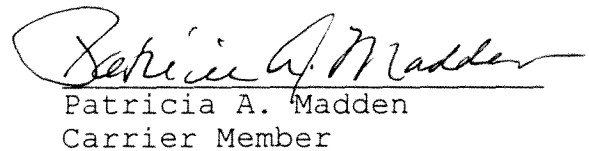
The Claim is <sup>sustained</sup> granted in accordance with the Opinion of the Board.



E. William Hockenberry  
Chairman and Neutral Member



Donald D. Bartholomay  
Employee Member



Patricia A. Madden  
Carrier Member

Dated: ~~MAY 05 1999~~ March 8, 2000