

SPECIAL BOARD OF ADJUSTMENT NO. 1110

Award No. 45
Case No. 45

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 failed and refused to bulletin and fill a pump repairman position vacated by Mr. C.G. Stroud upon his retirement on June 2, 1995 [System File 9(22)(95)/12 (95-1057) LNR].
2. As a consequence of the aforesaid violation:
 - (a) Carpenter Helper R.C. Robinson shall be compensated for the difference between what he was paid and the rate of a pump repairman beginning June 2, 1995 and continuing until the pump repairman position is advertised and assigned in accordance with the Agreement; and
 - (b) furloughed Bridge and Building employee W.J. Mahoney shall be paid eight (8) hours' pay at the carpenter helper's rate of pay for each workday beginning June 2, 1995 and continuing until he is recalled to service to fill the carpenter helper vacancy created by the retirement of Mr. Stroud.

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. In June 1995, G.C. Stroud, the incumbent of the pump repairman position on the Nashville Terminal Seniority District retired. The Carrier asserts that inasmuch as the volume of pump repairman work no longer warranted a full-time position, Mr. Stroud's position was abolished effective at the close of business June 2, 1995.

4. The Organization claims the Carrier failed to bulletin the resulting vacancy in accordance with Rule 14(a) of the Agreement, which provides that vacancies be bulletined within 10 calendar days after a permanent vacancy occurs. The Organization further asserts that the Carrier violated Rule 22(d)(1) of the Agreement by failing to fill the vacancy created by the retirement of the employee. The Organization requests that the position be filled by the Senior Cutback Employee, Claimant Robinson, and that his resulting vacancy be filled by recalling furloughed Claimant Mahoney.

5. In denying the claim, the Carrier argues that no rule in the Schedule Agreement requires that a position be established and maintained where insufficient work exists to maintain such position. The Carrier asserts that it has the prerogative to determine the size of its work force and that the Board has no authority to require it to establish unnecessary positions. The Carrier contends that the Board is being asked to exceed its authority and for this reason must dismiss the claim for want of jurisdiction. Citing authority, the Carrier claims that jurisdictional issues may be raised at any time during the proceedings.

6. As to the merits, the Carrier argues that Rule 14 deals with new or vacant positions and Rule 22(d)(1) deals with temporary or extra positions; neither rule applies to this dispute. The Carrier maintains that the pump repairman position was abolished upon the retirement of the employee and that no pump repairman position thereafter existed. The Carrier points out that once the position was abolished it created no new positions nor caused any vacancies. The Carrier argues that it had no need for a pump

repairman at Nashville once Mr. Stroud retired and his position was abolished.

7. The Carrier contends that the only evidence submitted in the handling of the Claim is a copy of a Nashville Fire Department private fire hydrant inspection report performed on one isolated date in June 1995 which indicated that all of the 38 private fire hydrants on the CSXT property in Nashville were in working order save one. The Carrier points out that the other "evidence" submitted by the Organization was its suspicion that the Carrier planned to assign work of pump repairman to others since it no longer maintained a position. The Carrier argues that in the ten month period following the abolishment of the position and the on-property handling of the Claim, not one incident was cited where work was assigned improperly.

8. The Organization contends that the Carrier violated Rule 14(a) which specifically requires that all new or vacant positions of a class coming within the scope of the Agreement be bulletined within 10 calendar days prior to or after the date the position is created or vacated. The Organization points out that there is no dispute that the Carrier failed to advertise or post a bulletin within 10 days after the retirement of Mr. Stroud.

9. The Organization further argues that the Carrier's defense that it had abolished Mr. Stroud's position lacks merit. The Organization claims that in order for the Carrier to effect a force reduction under Rule 21, it must provide the Organization with 5 days' notice to each individual involved in a particular force reduction (Rule 21(b)). The Organization contends that the Carrier never provided Rule 21(b) notice; absent evidence that notice was given, the position of pump repairman was never abolished and still exists to this day.

10. Citing authority, the Organization contends that the Carrier had the burden to prove that it furnished notice under Rule 21(b) and has failed to do so.

OPINION:

The Board is persuaded that the Carrier did not violate the

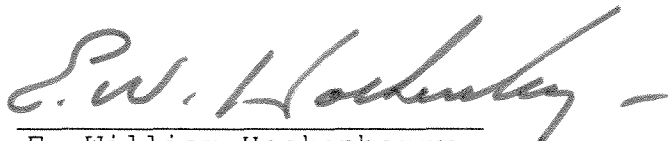
Agreement when it abolished the position of Pump Repairman upon the retirement of Mr. Stroud in June 1995. The Carrier has the right to determine its staffing requirements, in accordance with the Agreement. The Board is persuaded that it has done so in this instance.

There is no evidence that the Carrier shifted the work previously performed by Mr. Stroud to another classification of employee, and that the work continues to be performed. The evidence indicates that there was simply no more work to be performed by the Pump Repairman position. Accordingly, the Carrier was not obligated by Rule 14(a), relied upon by the Organization, to bulletin the position.

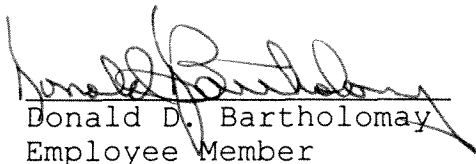
The Board is not persuaded that the Carrier had an express obligation to notify the Organization of the abolishment of the position. The Organization's reliance upon Rule 21, entitled "Force Reduction" appears to be misplaced. Rule 21 requires the Carrier to give individuals affected by a force reduction 5 days' notice. Such notice was not applicable here.

AWARD:

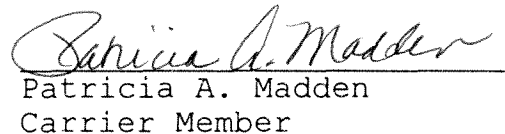
The Claim is denied in accordance with the Opinion of the Board.



E. William Hockenberry
Chairman and Neutral Member



Donald D. Bartholomay
Employee Member



Patricia A. Madden
Carrier Member

Dated: OCT 25 1995