

SPECIAL BOARD OF ADJUSTMENT NO. 1110

Award No. 47

Case No. 47

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 Section Gang 5MA5 Foreman R. L. Middleton to perform flagging protection work in the vicinity of Mile Post F-278.0 on the Memphis Subdivision on May 1, 2, 3, 4, 5 and 8, 1995 [System File 14(39) (95)/12(95-1065 LNR)].
2. As a consequence of the aforesaid violation, Mr. J. B. Grooms shall be allowed the difference in pay between the track repairman's rate of pay and that of fence gang foremen for eight (8) hours on each of the aforesaid dates and he shall be allowed thirteen (13) hours' pay at the fence gang foreman'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 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. Claimant J. D. Grooms holds seniority as a track repairman and assistant foreman in the Track Subdepartment on the Nashville Division. On the claim dates, he was working in the lower rated

position, as a track repairman, on Section Gang 5MA5 headquartered at Brownsville, Tennessee. Claimant advised the Carrier of his desire to be considered for relief work. Claimant worked under the supervision of Foreman R. L. Middleton.

4. In approximately May 1995, the Carrier contracted with an outside concern to perform work unloading and distributing ties along the right of way on the Memphis subdivision. The Carrier was aware that such work would require the presence of a flagman throughout the tie unloading process. The Organization contends that although Claimant held seniority as an assistant foreman and was readily available to perform flagging work, the Carrier instead removed Section Foreman R. L. Middleton from his regularly assigned, higher-rated, foreman position to perform such work. The Organization contends that Claimant was entitled to be upgraded and assigned to perform the flagging work involved under Rule 22(d)(1).

5. The Organization contends that in failing to upgrade Claimant, his seniority rights were violated under Rules 1, 3, 4, 5 and 6 of the Agreement. The Organization contends that under a Memorandum of Agreement dated April 29, 1987, the parties agreed that "when flagging positions are advertised to Maintenance of Way employees, such positions will be advertised as "assistant foreman - flagging" with a rate equivalent to that of fence gang foreman. It is further agreed that positions requiring flagging protection at various locations will be advertised as floating positions. When flagging protection is required on bridges where work is restricted to the bridge, positions of assistant foreman-flagging will be advertised to employees of the B&B Subdepartment".

6. The Organization contends that the Carrier was required to assign an employee holding assistant foreman seniority when services of a flagman to work with the contractor forces was required. The Organization points out that Foreman Middleton was taken away from his regularly assigned position for 6 work days to perform flagging work. By that action, the Carrier created a vacancy in that foreman position. The Organization argues that Foreman Middleton enjoyed no such contractual entitlement under Rule 22(d)(1) to perform the flagging work; Claimant was entitled to perform such work.

7. The Carrier argues that Foreman Middleton along with other members of his section gang were assigned to assist with the unloading operation (counting ties, putting out markers to spot the unloading, getting track authorities, and, on occasion, providing flag protection for the unloading contractor). The Carrier argues that the Organization's Claim is premised on the mistaken belief that Section Foreman Middleton was taken off of his assignment to perform flagging work and that the flagging required on the dates in question constituted "temporary or extra work" and as such should have gone to the senior cut-back assistant foreman, Claimant Grooms.

8. The Carrier argues that the evidence below confirms that "flagging" is not work which accrues exclusively to maintenance of way employees, much less to the rank two employees in the Track Subdepartment. The Carrier contends that no maintenance of way position was advertised or was required to be advertised to perform incidental flagging work on the 6 days on which ties were unloaded by the contractor. Similarly, the Carrier argues that the performance of flagging work by the foreman of a section gang either with or without the other members of his gang is not in violation of any rule or long-standing past practice and did not constitute "temporary or extra" work contemplated by Rule 22(d)(1) of the Agreement.

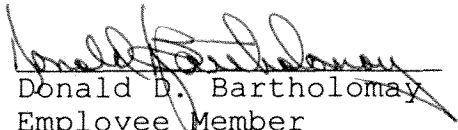
OPINION:

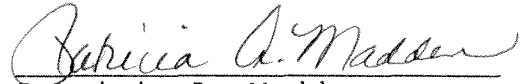
The Organization has not established that the work performed by Foreman Middleton was significant. The record indicates that while assisting the contractor in the unloading operation, Foreman Middleton performed work in counting ties; putting out markers to spot the unloading; obtaining track authority; and providing occasional flag protection. The Board is persuaded that the Carrier did not violate the Agreement by Foreman Middleton's performance of "limited and incidental flagging activity". (See SBA 1110, Award No. 14).

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 1999