

SPECIAL BOARD OF ADJUSTMENT NO. 1110

Award No. 49

Case No. 49

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 employee B. R. Sissom, who did not hold machine operator seniority, to operate a backhoe on Saturday, August 26, 1995, instead of assigning Nashville Division Machine Operator R. D. Flatt thereto.
2. As a consequence of the aforesaid violation, machine Operator R. D. Flatt shall be allowed eight (8) hours' pay at the backhoe operator's time and one-half rate and Mr. B. R. Sissom shall be allowed eight (8) hours' pay of time and one-half rate because he was not compensated for the service performed on August 26, 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. The Organization argues that Claimant Sissom, who had requested to "cub" actually performed work on the claim date and was not guided by a qualified operator. As such, Claimant Sissom

was not "cubbing" but was actually performing the work to which Claimant Flatt was entitled. The Organization points out that Claimant Sissom was not "learning excavation and grading technique"; he was assigned by Roadmaster Grady to remove and replace crossties for eight (8) hours.

4. Citing authority, the Organization argues that Claimant Sissom's request to "cub" does not abrogate the requirement in the Agreement that he be paid the applicable machine operator's rate for the actual work performed.

5. The Organization further argues that Claimant Flatt was the "regular employee" who ordinarily operated the backhoe during his normal work week on his home section and was thus contractually entitled to the work performed by Claimant Sissom. The Organization contends that the Carrier violated Rule 30(g) of the Agreement by failing to grant Claimant Flatt the backhoe work.

6. The Carrier acknowledges that Claimant Sissom "cubbed" with the 5M20 gang on the claim date, but argues that such a practice is routinely done to enable the employee to become qualified on a certain position.

7. The Carrier argues that Rule 30(f) and (g) are not applicable to the dispute. The Carrier contends that had Claimant Sissom not requested to "cub" that day, no backhoe operator would have been called in to perform overtime work on the claim date. The carrier argues that Rule 30 applies only where "work" is required.

8. Citing authority, the Carrier contends that the doctrine of equitable estoppel is applicable here; Claimant Sissom requested the opportunity to "cub" and thus acquiesced in the arrangement including the fact that he would receive no pay for the day.

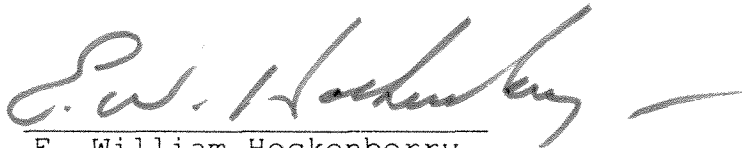
OPINION:

The evidence in the record does not support the carrier's assertion that Claimant Sissom was training on the backhoe on the claim date pursuant to his request to "cub". The evidence establishes that Roadmaster Grady instructed Claimant Sissom to go

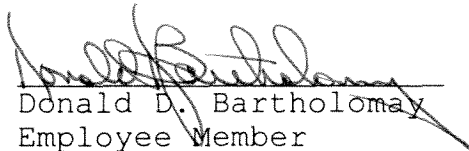
with the 5M20 gang to perform work in installing ties. The evidence further indicates that no regular backhoe operator was present during that time to guide or train Claimant Sissom in the proper operation of the backhoe. Based on this evidence, the Board concludes that contrary to the Carrier's assertion, Claimant Sissom was not "cubbing" on the claim date; he performed work to which Claimant Flatt - by virtue of Rule 30 - was contractually entitled. The Carrier received the benefit of the work performed by Claimant Sissoms.

AWARD:


The Claim is sustained in accordance with the Opinion of the Board. Claimant R. D. Flatt shall be allowed eight (8) hours' pay at the backhoe operator's time and one-half rate and Claimant B. R. Sissom shall be allowed eight (8) hours' pay of time and one-half rate.



E. William Hockenberry
Chairman and Neutral Member



Donald D. Bartholomay
Employee Member



Patricia A. Madden
Carrier Member

Dated: OCT 25 1999