

SPECIAL BOARD OF ADJUSTMENT NO. 1110

Award No. 50

Case No. 50

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 to provide Truck Driver N. F. Cox with a five (5) day force reduction notice when his position as a truck driver on Force 6CY2 was improperly rebulletined without being abolished and when the Carrier failed to allow Truck Driver N. F. Cox to displace a junior employee on Force 6CY2 on September 30, 1995 [System File 6(4)(95)/12(96-30) LNR]
2. The Agreement was violated when the Carrier failed to allow Truck Driver N. F. Cox to displace junior truck drivers on either the Pineville or Corbin, Kentucky truck driver positions on November 2, 1995 [System File 6(5)(95)/12(96-30)].
3. The Agreement was violated when the Carrier failed to allow Truck Driver N. F. Cox to displace junior truck drivers on either the Pineville or Corbin, Kentucky truck driver positions on November 17, 1995 [System File 6(6)(95)/12(96-30)].
4. As a consequence of the violation referred to in Part (1) above, Truck Driver N. F. Cox shall be allowed forty (40) hours' pay at the truck driver's rate of pay for not being provided a force reduction notice and thirty (30) hours' pay at the truck driver's straight time rate of pay because he was not allowed to displace a junior employee on September 30, October 1 and 2, 1995.

5. As a consequence of the violation referred to in Part(2) above, Truck Driver N. F. Cox shall be "... allowed ten (10) hours straight time for each date of November 3, 4 and 5, 1995 at the Truck Driver's rate of pay. He also should be allowed to exercise his seniority to one of these Truck Driver's positions held by the junior employees and be paid for any and all straight time, overtime and expenses he may have accrued for the date of November 6, 1995 and continuous until this violation is corrected.'
6. As a consequence of the violation referred to in part (3) above, Truck Driver N. F. Cox shall be allowed ten (10) hours' pay per day at the truck driver's straight time rate of pay commencing November 18, 1995 and continuing until the violation is corrected. He shall also be allowed any and all overtime worked by the junior employee."

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. On May 30, 1995, the Carrier advertised a truck driver position on Force 6CY2 headquartered at Pineville, Kentucky with Position Bid No. LNCV-0030. Claimant was awarded the position effective June 19, 1995. The Organization contends that the Carrier held Claimant on SPG Gang 6XT1 and refused to allow him to assume the position. The Organization argues that the Carrier subsequently rebulletined the position without notifying Claimant that his position had been abolished and continued Claimant on SPG Gang 6XT1. The Carrier rebulletined the position several times without receiving bids. On October 2, 1995, the bid was finally awarded to Mr. Chaney.

4. The Organization contends that when Claimant was released from SPG Gang 6XT1 on September 26, 1995, Roadmaster Wynn advised him that he would be permitted to displace junior employee Chaney provided he obtain his certified driver's license ("CDL"). The Organization argues that such a requirement of Claimant was arbitrary as the only vehicle assigned to Force 6CY2 was a pickup truck, the operation of which did not require a CDL.

5. The Organization argues that Claimant lost ten hours of work on September 30, October 1 and 2, 1995 as a result of the Carrier's requirement. The Organization further claims that Claimant lost additional work when he attempted to displace Mr. Chaney; Claimant was eventually forced to await recall while junior employees were allowed to continue working.

6. The Organization asserts that the carrier violated Rule 16 of the Agreement when it refused to allow Claimant to fill the position he was awarded by bulletin on June 19, 1995. The Organization argues that the Carrier compounded its violation by rebulletining the subject truck driver position without abolishing it. The Organization contends that the Carrier was obligated, by Rule 21(b) to provide Claimant with five days' notice that his position would be abolished; since Claimant was never so notified, the position was not abolished.

7. The Organization argues that the Carrier could not use the CDL requirement to abrogate Claimant's seniority, as there was no showing that the possession of such license was reasonably related to the position. The Organization contends that such a requirement was not contained in the bulletin for the position.

8. The Carrier argues that the claim must be denied as Claimant did not meet the qualifications for the truck driver position; he was not CDL certified. The Carrier points out that the job bulletins under which Claimant bid specifically state: "Must be FRA qualified and possess current CDL license with appropriate endorsements".

9. The Carrier contends that Claimant was initially awarded the bid in error, but never worked in the position due to requirements of his then-current position. The Carrier further

asserts that Claimant did not possess the proper requirements when he attempted to displace junior employees thereafter. Citing authority, the carrier contends that displacement rights over junior employees are conditioned on the senior employee being qualified for the position. The Carrier cites further authority which states that it is within the Carrier's right to set qualifications for a job. The Carrier argues that its requirement of a CDL for the position was proper, as there are regular instances where trailers are utilized to carry machinery assigned to the force.

OPINION:

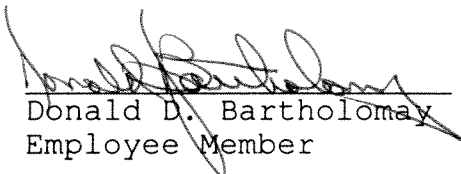
The Board is not persuaded that the Carrier violated the Agreement by its actions. The bulletins announcing the truck driver position clearly state the requirement that the employee possess a current CDL license with appropriate endorsements. Claimant does not possess a CDL license. The Organization has failed to show that the CDL requirement for the position was unreasonable or arbitrary. The record indicates that the Carrier awarded Claimant the truck driver position in error. The Board is persuaded that the Carrier was within its rights to rebulletin the position and award the truck driver position to a qualified employee.

AWARD:

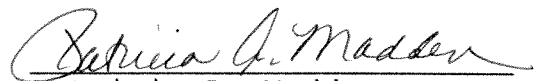
The Claim is denied in accordance with the Opinion of the Board.



E. William Hockenberry
Chairman and Neutral Member



Donald D. Bartholomay
Employee Member



Patricia A. Madden
Carrier Member

Dated: OCT 25 1999