

SPECIAL BOARD OF ADJUSTMENT NO. 1048

AWARD NO. 118

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

(Carrier File MW-FTW-01-21-LM-114)

Statement of Claim:

Claim on behalf of G. A. Archer, et al, for \$20.00 off-district and off-division pay and an additional 40 hours straight time for performing work on the New Castle District from January 15 to 19, 2001.

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

AWARD

After thoroughly reviewing and considering the transcript and the parties' presentation, the Board finds that the claim should be disposed of as follows:

BACKGROUND

The case before the Board questions whether the Claimants are entitled to the Transportation Special Allowance provided to certain employees pursuant to Rule 43(f) of the July 1, 1986 NW-Wabash Agreement for working off their Roadmaster's District or working off their division seniority and additionally, whether the Claimants are entitled to any additional compensation for working on another prior-rights territory within their seniority district. It is undisputed that each Claimant herein began his employment relationship with the Carrier under the Nickel Plate Agreement.

Rule 43(f) NW-Wabash Schedule Agreement, dated July 1, 1986 provides the following:

(f) Transportation Special Allowance

(1) (Applicable to employees having an employment relationship with Carrier on December 1, 1983)

- (a) An employee regularly assigned a position on a Roadmaster's district or terminal, shall, when working off such district or terminal, be paid an allowance of \$10.00 each week when so worked.
- (b) An employee working in a gang or force permanently assigned to work over the Eastern or Western (Wabash) Region shall, when working off his division seniority, be paid an allowance of \$10.00 each week when so worked off of said division seniority. Any allowance under this paragraph (b) shall be in addition to the allowance provided for in paragraph (b) above provided such employee meets the qualifications for paragraph (a).

Between January 15 and 19, 2001, each of the Claimants (except for machine operator Treace) was assigned to Section Gang No. 17 with fixed headquarters located at Fort Wayne, Indiana. This portion of the Western seniority region was previously Nickel Plate Territory (also known as the Chicago prior rights territory) where the Claimants possessed prior rights to fixed headquarter positions. Claimant Treace, also located on the former Nickel Plate territory of the Western seniority Region, was assigned to a non-fixed headquarter machine operator position operating a backhoe. Mr. Treace had prior rights in the exercise of seniority to such positions on the former Nickel Plate territory but his assignment contemplated working over the entire Western seniority Region.

From January 15 through 19, 2001, the Claimants performed work between Mile Post CR 160-165 in the vicinity of Bluffton, Indiana, formerly Nickel Plate territory located on the New Castle prior rights territory within the same Western seniority Region as the Chicago prior rights territory. The Claimants assigned to the section gang went on and off duty at their fixed headquarter point in Fort Wayne. The Organization submitted the instant claim on behalf of the Claimants for:

- \$20.00 on the basis that "the Carrier has failed and refused to compensate claimants the appropriate of District and off Division pay" pursuant to Rule 43(f) – Transportation Special Allowance, and

- “Forty (40) hours pay at their respective straight time rate” maintaining that “Chicago District employees” are entitled to compensation for work performed “on the New Castle District.”

The Carrier denied each claim on the basis that:

- The Claimants were not covered by Rule 43(f) – Transportation Special Allowance in that Rule 43(f) only applies to those employees who had an employment relationship with the Carrier that began under the NW-Wabash Agreement prior to December 1, 1983, and Rule 43(f) has not been extended to former Nickel Plate employees, and
- Claimant Treace was not eligible for coverage under Rule 43(f) because he was employed as a “traveling employee”, and
- There was no basis in the Schedule Agreement for the provision of compensation to employees working off their prior-rights territory on another territory where they hold seniority rights.

DISCUSSION

In making a determination based on the facts herein, the Organization, who bears the burden of proof in this case, must be able to point to a specific Rule or the existence of an exclusive system-wide practice that supports its claim. Accordingly, in the instant matter, the Organization must show that the Claimant's are covered by Rule 43(f) in order to succeed in their claim.

In order to analyze the Organization's claim, we begin with Rule 43(f) itself. The Rule is clear in that those employees entitled to coverage must have had an employment relationship with the Carrier as of December 1, 1983. Accordingly, Rule 43(f) by its very terms does not apply to those Claimants whose employment relationship with the Carrier began under the former NKP Agreement and as a result, held no NW seniority on December 1, 1983, nor Wabash seniority on July 1, 1986. As a result, Rule 43(f) applies only to those employees who held seniority under the former NW and Wabash Agreements as of those dates. With this point well established, it is clear that while each Claimant has a seniority dates that predates December 1, 1983, none held NW seniority on December 1, 1983 nor Wabash seniority on July 1, 1986. Accordingly, they cannot claim

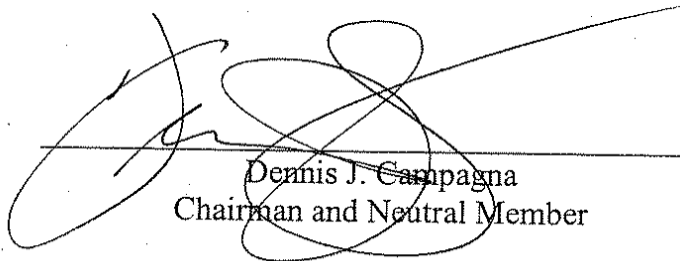
Transportation Special Allowance monies under Rule 43(f). A review of the record in this case shows that the Carrier has been consistent in cases of this nature. In this regard, the record shows that on June 1, 1999 former Conrail employees were placed under coverage of the NW-Wabash Agreement but none were afforded the Transportation Special Allowance as provided in Rule 43(f) since they were neither former NW nor Wabash employees as of December 1, 1983. Moreover, since the Organization had never made a claim for this Allowance on behalf of this group of employees, it is evident that the Organization acquiesced to the Carrier's determination.

Finally, the record shows that Claimant Treace was a "traveling" employee subject to the traveling allowance provided for in Article 14 of the September 29, 1996 National Agreement and accordingly, would not be entitled to the Transportation Special Allowance since the National Agreement specifically provided for the payment of a Travel Allowance.

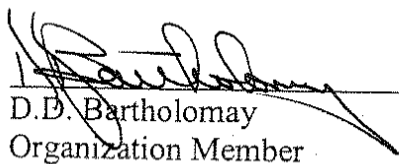
Given the foregoing, there is no basis in the record to support the Organization's claim.

CONCLUSION

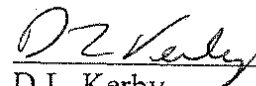
The claim is denied.



Dennis J. Campagna
Chairman and Neutral Member



D.D. Bartholomay
Organization Member



D.L. Kerby
Carrier Member

July 24, 2006
Dated