

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 1

Case No. 1

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

CSX Transportation, Inc. (Formerly the Baltimore
and Ohio Railroad Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it assigned or otherwise allowed C&O Railroad employees M. A. Lewis and O. McKinney to perform Maintenance of Way work on the B&O Ohio-South Seniority District between Mile Posts 56 and 76 beginning May 10 through 21, 1993 [System File B-TC-8023/12 (93-1136) BOR].

2. The Carrier violated the Agreement when it assigned or otherwise allowed C&O Railroad employees M. A. Lewis and O. McKinney to perform Maintenance of Way work on the B&O Ohio-South Seniority District between Mile Posts 56 and 76 beginning May 10 through 21, 1993 [System File B-TC-8024/12 (93-1169)].

3. As a consequence of the violation referred to in Part (1) above, Messrs. C. D. McCoy and R. L. Boyer shall each be compensated, at the Class A Machine Operator's time and one-half rate of pay, for an equal proportionate share of the eighty-four and one-half (84.5) overtime hours expended by the C&O Railroad employees in the performance of the work in question.

4. As a consequence of the violation to in Part (2) above, furloughed employees J. Freeman and C. F. Freeman shall each be compensated, at the Class A Machine Operator's rate of pay, for an equal proportionate share of the one hundred twelve (112) straight time hours expended by the C&O Railroad employees in the performance of the work in question, plus credited with days for vacation "qualification, one (1) month for retirement and all other benefits."

FINDINGS:

This Board, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and the Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act, as amended;; and

2. That the Board has jurisdiction over this dispute.

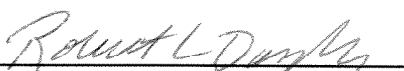
OPINION OF THE BOARD:


The record indicates that the parties settled Claim 2 and Claim 4 prior to the meeting of this Board. Accordingly, this Board only will address Claim 1 and Claim 3. The record further indicates that a violation occurred as reflected in Claim 1.


In this regard, the Union cites extensive precedent and asserts that the Claimants (in Claim 3) should receive overtime compensation to make them whole for the applicable loss of work opportunities at the overtime rate of pay. The Carrier also cites extensive precedent and urges that straight-time compensation constitutes such a make-whole remedy for work not performed and that granting overtime compensation to the Claimants would constitute a penalty, rather than merely a make-whole remedy. In the instant matter the record indicates that the wrongfully assigned employees received overtime compensation for performing the disputed work. The record omits any indication that the Claimants were not available to perform the disputed work, were not qualified to perform the disputed work, or had not qualified for overtime on the relevant dates. On this basis, the proper make-whole remedy requires the Carrier to compensate the Claimants at the applicable overtime rate of pay. In this context, the overtime remedy does not constitute a penalty because the Claimants lost the opportunity to work overtime and the granting of overtime reasonably approximates the actual damages that the Claimants suffered for the contractual violation.

AWARD:

The Claim is sustained in accordance with the Opinion of the Board. The Carrier shall make the Award effective on or before 30 days following the date of this Award.


Robert L. Douglas
Chairman and Neutral Member


Donald D. Bartholomay
Employee Member


Patricia A. Madden
Carrier Member

Dated: 12/3/98