

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 21
Case No. 21

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

CSX Transportation, Inc. (Formerly the Seaboard System
Railroad Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned an employe from the Atlanta-Waycross Seniority District to operate a Lucky material handler on the Jacksonville-Tampa Seniority District commencing October 3, 1994 and continuing [System File 33(3)(94)/12(95-0070) LNR].
2. As a consequence of the violation referred to in Part (1) above, Jacksonville-Tampa Seniority District Group A Machine Operator R.O. Roberts shall now be compensated at the Group A Machine Operator's straight time rate of pay for the two hundred forty (240) hours initially expended and continuing until the violation is corrected.

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:

This dispute involves the assignment of a Machine Operator from the Atlanta-Waycross Seniority District to the Jacksonville-Tampa Seniority District. The record fails to prove that any qualified Machine Operators from the Jacksonville-Tampa Seniority District were available to operate the machine.

Section 1 of Rule 14, titled "Transfer and Trading Positions," provides:

When a Maintenance of Way machine is sent or transferred from one seniority District to another, the assigned operator will, if instructed, accompany the machine to the point designated in the instructions, and may be required to operate it, if necessary, until he is relieved (but not in excess of five (5) work days) by the operator entitled to the machine on that District, who will be promptly called. The position will be bulletined at once. If there is no qualified machine operator on the District available to operate the machine, the operator sent with it may operate the machine, but not in excess of thirty calendar days, until an operator on the District is available or has qualified, or the position is filled in accordance with Section 7 of Rule 8 and Sections 1 and 2 of Rule 10 and Section 3 of Rule 7.

In the absence of any qualified and available Machine Operator from the Jacksonville-Tampa Seniority District, the Machine Operator from the Atlanta-Waycross Seniority District had a right to remain with the machine for up to 30 days.

The record omits any evidence that the Carrier bulletined the position as required by Rule 14. As a result, the Carrier committed a technical violation of the Agreement. Although the record indicates that the Carrier had assigned all of the potentially eligible Machine Operators in the Jacksonville-Tampa Seniority District to work assignments in connection with the completion of the rail program, the Carrier still had an affirmative obligation to bulletin the position.


With respect to the present Claimant, the record substantiates that the Claimant had worked the normal 40 hours each week and also had worked 133½ hours of overtime and 4 hours of double time during the entire relevant period of time. Thus the Claimant was fully employed and suffered no monetary loss due to the actions of the Carrier.

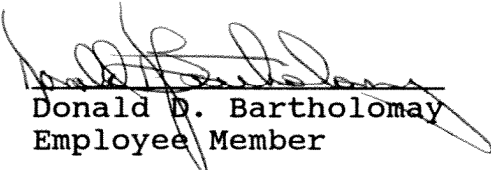
Pursuant to Rule 14, the Carrier only had a potential right to have the Machine Operator from the Atlanta-Waycross Seniority District remain with the machine for a maximum of 30 calendar days. The record indicates that the present claim, to the extent that it is potentially valid, covers the period of 38 days from October 3, 1994 to November 10, 1994. This aspect of the dispute therefore involved a potential claim of a maximum period of compensation of 8 days.


Under the special circumstances of the present dispute, awarding the Claimant, who was at all times fully employed and working overtime, any compensation--either with respect to the technical violation arising from the failure to bulletin or the substantive violation arising from the breach of the 30 day provision--would be inappropriate. As a result, the compensation sought by the Claimant shall not be awarded under these particular unusual circumstances.

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: March 5, 1999