

SPECIAL BOARD OF ADJUSTMENT NO. 1110

Award No. 26

Case No. 26

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 called and used employees not assigned to the Pensacola Section to perform overtime service between Mile Posts 652.2 and 667.0 which is located on the Pensacola Section on October 28, 1994, instead of assigning Pensacola Section employees W.E. Rogers and L.L. Arnette [System File 19(35)(94)/12(95-0279) LNR].
2. As a consequence of the violation referred to in Part (1) above, Pensacola Section employees W. E. Rogers and L. L. Arnette shall each be allowed three (3) hours' pay at their respective time and one-half rates.

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. That on October 28, 1994, the Carrier utilized Trackmen Wyrosdick and Madden, who are assigned to the Crestview Gang, to perform inspections of track from milepost K 700.6 to Mile Post K

651.3, three (3) miles north of Pensacola. The inspection work occurred from 4:00 a.m. to 7:00 a.m. The Carrier asserts that, because of extreme cold weather conditions, immediate and additional inspections were needed to continue the safe operation of the railroad.

4. The Organization asserts that Claimants, who were regularly assigned to Gang 5M13 on the Pensacola Section, had contractual preference to overtime on their home section and should have been called. The Organization claims that the Carrier made no effort to contact Claimants; and that the Carrier's failure to do so violated Rule 30(f) which requires that senior available men "be given preference in the assignment of overtime work on their home sections". The Organization further contends that the Carrier failed to prove that such inspections were made necessary because of extreme cold weather conditions.

OPINION:

The Organization correctly asserts that Rule 30(f) governs the assignments at issue in this dispute. Under Rule 30(f), Claimants were entitled, as the senior available men, to preference in the assignment of overtime work on their home sections. The Carrier does not dispute that some of the track inspected by Trackmen Wyrosdick and Madden was located in Claimants' home section. The Carrier also does not dispute that Claimants were available to perform this work. Instead, the Carrier claims that it was not obligated to extend contractual preference to Claimants due to extreme cold weather conditions. The Board is not persuaded by the merit of this argument.

The Carrier has not proffered sufficient evidence that the inspections performed by Trackmen Wyrosdick and Madden were necessitated by an "emergency". Indeed, the Carrier implicitly acknowledges that emergency conditions did not exist on the morning of October 28, 1994 by asserting that extreme cold weather "could have" caused broken or twisted rail. There is simply no evidence that the weather conditions present at that time were of such a nature that prevented the Carrier from abiding by the contractual obligation set forth in Rule 30 (f) to give Claimants preference to perform the three (3) hours of overtime on their home section. The

Organization has set forth sufficient proof that Claimants were then available to perform the overtime inspections and should have been called.

AWARD:

The Claim is sustained in accordance with the Opinion of the Board. Claimants are hereby awarded three (3) hours of pay at their respective time and one-half rate(s) of pay.



E. William Hockenberry
Chairman and Neutral Member



Donald D. Bartholomay
Employee Member



Patricia A. Madden
Carrier Member

Dated: OCT 25 1999