

SPECIAL BOARD OF ADJUSTMENT NO. 1110

Award No. 30

Case No. 30

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 assigned Welder R. K. Orr and Welder M. Pinkley to perform track repairmen's work (pulling/driving spikes, removing and knocking on rail anchors and tamping ties in connection with making field welds) on the Nashville Division, Bruceton subdivision between Mile Posts N-2.4 and N-74.1 on November 1, 2, 3, 4, 7, 8, 9, 10, 11, 13, 18, 21, 28, 29 and 30, 1994, instead of assigning Track Repairman G. L. Hedge [System File 14 (107)(94)/12(95-0441) LNR].
2. The Agreement was further violated when the Carrier assigned Assistant Roadmaster T. W. Long to perform road work at Mile Post N-95.4 in Bruceton Yard on November 11, 1994.
3. As a consequence of the aforesaid violations, Track Repairman G. L. Hedge shall be allowed eight (8) hours' pay for each of the dates listed at his respective straight time rate and seven (7) hours' pay at his time and one-half rate for November 11, 1994.

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 February 24, 1995, in response to the Organization's claim, the Carrier advised the Organization that welders performed track repairman's duties while making field welds and that there was nothing in the Agreement which prohibited welders from performing this work. Specifically, the Carrier asserted:

Investigation into the allegations that welder Orr and helper Pinkley performed track repairman's duties reveals, as you state, these welders performed this work "while making field welds". There is nothing in the Agreement which prevents welders from performing this work which is an integral part of the field weld process.

4. In a subsequent denial of the Organization's appeal, the Carrier asserted that the work in question involved tasks that were directly related to the service performed by the welders and was work "incidental" to their welding duties.

5. The Carrier further asserts that Article XI of the imposed Agreement, entitled Intra-Craft Work Jurisdiction, permits the performance by employees of incidental tasks which are directly related to the service being performed and which they are capable of performing. The Carrier contends that the Agreement also provides that compensation paid to such Employees shall be at the applicable rate for the Employee performing the service and shall not constitute a basis for any time claims.

6. The Carrier maintains that there is no proof that the work in dispute was part of a Trackman's assignment to the exclusion of the Roadmaster's or Welder's assignment or that the Carrier was otherwise required to use Claimant to perform the work in dispute. The Carrier contends that the Organization has failed to sustain its burden of proof in this matter; its citation to numerous rules do not support the Organization's allegation that Claimant is entitled to the work to the exclusion of others.

7. The Organization argues that the subject work is

specifically designated as being track repairman's work under Appendix No. 34 of the Agreement, which incorporated into the Agreement a Letter of Understanding dated December 6, 1974. Appendix No. 34 states, in relevant part:

"In full settlement of the claim that was agreed to allow Mr. Watkins thirty (30) hours straight time, with the understanding that in the future on all seniority districts of this Company when field welds are being made a track repairman will be assigned to work with the welding gang to perform the track work unless the ties have already been spread to permit the field weld and that we will not be presented time claims that the welding gang is performing track Subdepartment work and also time claims that the track repairmen is performing welding Subdepartment work."

8. The Organization further claims that the record reveals that the Carrier assigned Assistant Roadmaster T.W. Long to perform various track repairman's duties at a derailment at Mile Post N-95.4 in the Bruceton yard.

9. The Organization argues that it is "crystal clear" that the Carrier violated the Agreement and the Letter of Understanding when it failed to assign a trackman to perform the necessary track work on the dates indicated in the claim. The Organization contends that, instead, the Carrier assigned a welding gang to perform such track Sub-department work.

10. The Organization contends that the Carrier's argument that the welders were performing "incidental" track work is not factually correct. The Organization argues that the Carrier assigned Welder Orr and his helper to perform track repairmen's duties at the location on the Bruceton subdivision. Such an assignment, the Organization argues, violated the agreement.

OPINION:

For the reasons which follow, the Board is persuaded that the Carrier violated the Agreement by failing to assign a trackman to perform the track work on the claim dates. The Carrier's assertion that the work performed by the welders was "incidental" is not supported by the record. The record indicates that the welders

engaged in pulling and driving spikes; removing and knocking on rail anchors and tamping ties. Indeed, the Carrier represented that such work was an "integral part of the field weld process".

The Board is persuaded that the work performed by the Welders was violative of Appendix No. 34, which expressly states that "when field welds are being made a track repairman will be assigned to work with the welding gang to perform the track work unless the ties have already been spread to permit the field weld". There is no evidence in the record that the ties at issue had already been spread to permit the weld.

The Board's holding is supported by Third Division Award No. 29913, decided on November 9, 1993, which addressed the Organization's claim that welders unspiked, moved and respiked ties in connection with their performance of welding work in violation of the Agreement. The Board, in finding a violation, stated:

The language of Appendix No. 34 is clear and unambiguous. It is uncontroverted on this record that Carrier failed to assign a Track Repairman to work with the Welder and Welder helper in question. The Board is not persuaded by Carrier's argument that the Welders performed Track Sub-department work without Carrier's authority thus absolving Carrier of any culpability in this regard.

Here, the Carrier argues not that it was without knowledge that the Welders would perform the track work, but that the track work was "incidental" to the Welders' tasks and thus covered by Article XI of the Imposed Agreement. The Board is not persuaded.

Article XI, entitled "Intra-Craft Jurisdiction", states:

Employees will be allowed to perform incidental tasks which are directly related to the service being performed and which they are capable of performing, provided the tasks are within the jurisdiction of the BMWE. Compensation shall be at the applicable rate for the employee performing the service and shall not constitute a basis for any time claims by other employees. This provision is not intended to alter the establishment and manning of work forces accomplished in accordance with existing assignment, seniority, scope and classification

rules.

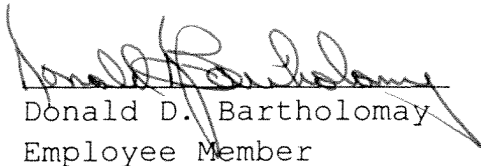
The Board is not persuaded that Article XI's general provision relating to "incidental" work trumps the specific provisions of Appendix No. 34. The Board notes that none of the authorities cited by the Carrier in support of its position that Article XI specifically governs this claim even addressed Article XI.

AWARD:

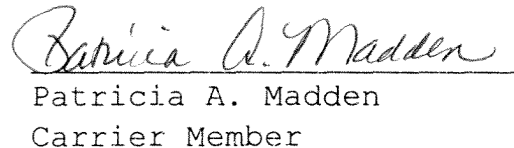
The Claim is sustained in accordance with the Opinion of the Board. Claimant Track Repairman G. L. Hedge is hereby awarded eight (8) hours of pay for each of the dates listed in the claim at his respective straight time rate; and seven (7) hours of pay at his time and one-half rate for November 11, 1994.



E. William Hockenberry
Chairman and Neutral Member



Donald D. Bartholomay
Employee Member



Patricia A. Madden
Carrier Member

Dated: OCT 25 1999