

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 127  
Case No. 127

PARTIES TO DISPUTE:

Brotherhood of Maintenance of 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 Foreman J. M. Clark to perform flagging duties in Nashville, Tennessee on April 20, 1998 instead of senior cut back employe M. D. Worrell [System File 4(4)(98)/12(98-1421) LNR].
2. As a consequence of the violation referred to in Part (1) above, Claimant M. D. Worrell shall now "... be paid 8 hours overtime at the Fence Gang Foreman's rate and the difference in Truck Driver and Fence Gang Foreman's rates for 8 hours straight time for April 20, 1998...."

FINDINGS:

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

1. That the Carrier and the Employees involved in this dispute 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.

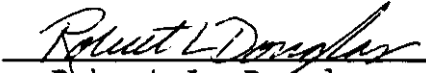
OPINION OF THE BOARD:

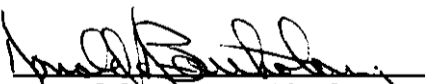
The present dispute involves an assignment to provide flagging

protection. A careful review of the record indicates that neither party identified who had track authority on the relevant date, April 20, 1998. The record also fails to clarify who was in charge of the flagging function at the time. In the absence of any concrete evidence in this regard, a presumption exists that the Foreman performed such a role. Insofar as the flagging assignment occurred as a continuation of the regular assignment performed by the Foreman, the record fails to prove that the Claimant had a superior right to perform the disputed work under these particular circumstances.

AWARD:

The Claim is denied in accordance with the Opinion of the Board.

  
Robert L. Douglas  
Chairman and Neutral Member

  
Donald D. Bartholomay  
Employee Member

  
Mark D. Selbert  
Carrier Member

Dated: 9-6-01