

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 141  
Case No. 141

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 Carrier violated the Agreement when it assigned Welder D. E. Rich and his Welder Helper to do track work while making field welds from Mile 75 to Mile 36 on February 16 and March 30, 1994 on the Nashville Seniority District. [System File 14(19)(94)/12(94-634) LNR].
2. As a consequence of the aforestated violation, Nashville Division Track Repairman R. A. Foster and Track Repairman L. J. Flake shall each be paid eight (8) hours straight time pay at their appropriate Track Repairman's rate for each day during the month of February and March 1994 that the violation occurred.

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:

Appendix 34 provides, in pertinent part, 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 sub-department work and also time claims that the track repairman is performing welding sub-department work.

This dispute involves an allegation about the performance of scope covered work by a Welder and a Welder Helper, who did not possess active seniority under the Agreement in the Track Subdepartment. The Welder and the Welder Helper did possess active seniority under the Agreement in the Welding Subdepartment.

Rule 3 and Rule 5 differentiate between the Track Subdepartment and the Welding Subdepartment. Employees covered by the Agreement accrue seniority in such different subdepartments.


The critical inquiry therefore requires a determination of whether the Welder and Welder Helper performed track work incidental to their primary work of welding or whether they performed a substantial and significant quantity of track work that warranted the assignment of the Claimants from the Track Subdepartment to perform such work.

A careful review of the record reflects that the Welder and the Welder Helper performed the disputed work. The Division Engineer confirmed that the Welder had received instructions to perform certain work that included making certain field welds. In performing such work, the record substantiates that the Welder also performed the disputed Track Repairman's work.


The performance of the disputed work caused the loss of these work opportunities for furloughed Claimant Flake. As a result, Claimant Flake shall receive 8 hours' pay at the Track Repairman's straight time rate of pay for each of the two dates covered by the Claim.

AWARD:

The Claim is sustained in accordance with the Opinion of the Board. The Carrier shall make the Award effective on or before 60 days following the date of this Award.

  
Robert L. Douglas  
Chairman and Neutral Member

  
Donald D. Bartholomay  
Employee Member

  
Mark D. Selbert  
Carrier Member

Dated: 10-1-01