

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 142
Case No. 142

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 Appendix 34 of the Agreement when it assigned Welder R. K. Orr and Welder Helper M. R. Pinkley to make field welds on January 3, 4, 5, 6, 7, 10, 11, 12 and 14, 1994 and caused them to perform Track Subdepartment work (moving joint bars, pulling spikes, re-spiking, spacing ties, tamping ties, taking off anchors, putting anchors back on the rail, and dressing the ballast section). [System File 14(4)(94)/12(94-630) LNR].
2. As a consequence of the aforestated violation, Nashville Division furloughed Track Repairmen B. J. Spicer and Track Repairman R. A. Foster shall be allowed eight (8) hours' straight time pay at their appropriate Track Subdepartment rate for each day during the month of January 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 Welder Orr alleged that he and a Welder Helper had performed the disputed work. Welder Orr indicated the specific nature of the disputed work. The Roadmaster confirmed that Welder Orr had received instructions to perform certain work that included making certain field welds. In performing such work, the record substantiates that Welder Orr also performed a significant amount of the disputed Track Repairman's work.

The record proves that the performance of the disputed work by the Welder and the Welder Helper occurred. The record further proves that the performance of such work caused the loss of certain work opportunities for furloughed Claimant Spicer and for furloughed Claimant Foster. As a result, each Claimant shall receive an equal proportionate share of 8 hours' pay (i.e. 4 hours' pay for each Claimant for each date) at the Track Repairman's straight time rate of pay for each of the 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
Robert L. Douglas
Chairman and Neutral Member

Donald R. Bartholomay
Donald R. Bartholomay
Employee Member

Mark D. Selbert
Mark D. Selbert
Carrier Member

Dated: 10-1-01