

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 144
Case No. 144

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

CSX Transportation, Inc.

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated Appendix No. 34 of the Agreement when it allowed Welder R. K. Orr and his Helper to perform Track Repairman's duties while making field welds between Mile Post 265.3 and Mile Post 371.8 and in Leewood Yard on the Memphis Subdivision on February 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 16, 18, 22, 23, 24, 25 and 26, 1993. [System File 14(22)(93)/12(93-613) LNR].
2. As a consequence of the aforestated violation, Track Subdepartment employees R. D. Davidson and J. B. Grooms shall be paid eight (8) hours' straight time pay at their appropriate Track Repairman's rate of pay for each day during February 1993 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 a claim 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.

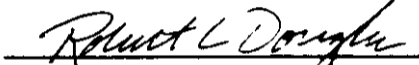
The critical inquiry therefore requires a determination of whether the Welder and Welder Helper performed track work incidental to their primary work of welding or whether they performed a substantial and significant quantity of track work that warranted the assignment of the Claimants from the Track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

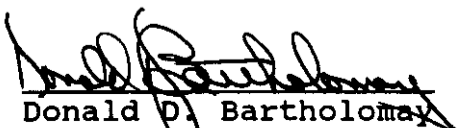
The record omits any direct evidence from the Welder or the Welder Helper about the specific nature and quantity of the disputed work that they allegedly performed on the relevant dates. The Division Engineer confirmed that the Welder and the Welder Helper had performed welding duties. In doing so, the record substantiates that the Welder and the Welder Helper necessarily performed some Track Repairman's work.

In the absence of any clearer delineation of the actual time spent on performing Track Repairman's duties and under these special circumstances, only senior Claimant Davidson shall receive one hour of pay at the straight time rate for each of the dates specified in the Claim. The Award shall so provide.

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