

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 149
Case No. 149

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 the Agreement when it failed to call and assign furloughed Foreman D. E. Bridegan and Trackman T. R. Mawharter to fill temporary section gang positions at Nappanee and Garrett, Indiana created when regularly assigned Section Foreman G. R. McNeal, Trackman J. C. Dunn and/or Section Foreman P. Logan and R. Edsall were assigned to fill foreman and tamper operator positions on a tamping gang beginning February 23, 2000 and continuing and when it failed and refused to bulletin the tamping gang positions [System File H41701000/12(00-0356) CSX].
2. As a consequence of the violation referred to in Part (1) above, ". . . Claimants Bridegan (Foreman) and Mawharter (Trackman) will each be paid 8 hours, each work day beginning February 23, 2000 and continuous until the tamping gang is advertised and awarded in accordance with the appropriate Agreement Rules.

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:

Rule 3 (Selection of Positions) provides, in pertinent part:

Section 3. Advertisement and award.

(a) All positions and vacancies will be advertised within thirty (30) days previous to or within twenty (20) days following the dates they occur. The advertisement shall show position title, rate of pay, headquarters, tour of duty, rest days and designated meal period.

.

(i) All vacancies must be filled or proper abolishment notice posted.

Section 4. Filling temporary vacancies

(a) A position or vacancy may be filled temporarily pending assignment. When new positions or vacancies occur, the senior qualified available employees will be given preference, whether working in a lower rated position or in the same grade or class pending advertisement and award. When furloughed employees are to be used to fill positions under this Section, the senior qualified furloughed employees in the seniority district shall be offered the opportunity to return to service. Such employees who return and are not awarded a position or assigned to another vacancy shall return to furlough status.

Rule 19 (Assignment to Higher or Lower Rated Positions) provides:

An employee may be temporarily assigned to different classes of work within the range of his ability. In filling the position which pays a higher rate, he shall receive such rate for the time thus employed, except, if assigned for more than four (4) hours, he shall receive the higher rate for the entire tour. If assigned to a lower rated position, he will be paid the rate of his regular position.

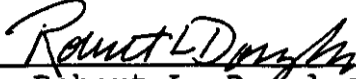
A careful review of the special circumstances set forth in the record indicates that the Carrier had a right to fill the new positions on the tamping gangs on the Garrett Subdivision of the Chicago Division in the referenced manner on a temporary basis. As a result, the present dispute involves certain work that had remained at Nappanee and Garrett, Indiana, and which the employees chosen by the Carrier to fill the new positions on the tamping gangs on a temporary basis had performed.

In the context of the quite limited time period covered by the Claim, no persuasive evidence exists that Rule 3 or any other provision of the Agreement, effective June 1, 1999, created an affirmative duty for the Carrier to backfill the assignments with the Claimants to perform the disputed work that had remained at

Nappanee and Garrett, Indiana.

AWARD:

The Claim is denied.


Robert L. Douglas
Chairman and Neutral Member


D.D. Bartholomay
Employee Member


~~James T. Kintzle~~
Carrier Member

Dated: 3-5-04