

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 151
Case No. 151

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 Agreement was violated when, on January 21, 2000, the Carrier abolished the position of trackman on Gang 5C18 and thereafter assigned the trackman duties to Foreman D. L. Hammac and Truck Driver A. W. Goins [System File G38608100/12(00-0276) CSX].
2. As a consequence of the violation referred to in Part (1) above, ". . . the trackman position on force 5C18 should be put back on, K. R. Marple should be allowed forty (40) hours straight time and 32½ hours time and one half at the trackman's respective straight time and time and one half rates of pay for the dates of January 22, 24, 25, 26 and 28, 2000 and should be paid continuous for all straight time and overtime hours worked until violation is corrected.

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 1 (Seniority Classes) provides, in pertinent part:

The seniority classes and primary duties of each class are:

. . . .

Track Department

. . . .

B. Track Roster:

1. Track foreman
Direct employees assigned under his jurisdiction.
2. Assistant Foreman
Direct and work with employees assigned to him
under the supervision of a foreman.
3. Trackman
construct, maintain, repair, inspect and dismantle
track and appurtenances thereto.

. . . .

D. Vehicle Operator Roster:

Vehicle Operator

Vehicle Operator operates all highway or rail-highway
vehicles:

Boom Trucks
Dump Trucks
Log Loaders
Grapple Trucks
Semi-LowBoy
Buses
Fuel Trucks
Six Man Pick-up Trucks

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

Section 1. Assignment to position.

In the assignment of employees to positions under this Agreement, seniority shall govern. The word "seniority" as used in this Rule means, first, seniority in the class in which the assignment is to be made, and thereafter, in the lower classes, respectively, in the same group in the order in which they appear on the seniority district roster. If required, the awardee will be given equal and fair instruction and training up to period of thirty (30) days depending on the position in order to become qualified for the position. Employees making application for or bidding advertised positions that do not possess seniority in the class will be given preference as follows:

. . . .

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.

. . . .

(h) Except as otherwise provided in this Agreement, it is understood that an employee shall be assigned duties associated with the job class he was assigned by bulletin award.

(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.

Rule 1 contains clear, explicit, and plain language to identify the "primary duties" of each class. The critical clause "primary duties" signifies that the parties carefully agreed to limit the range of the "primary" tasks that the employees in different classes perform. By using the term "primary" in Rule 1, the parties recognized that employees may perform secondary tasks beyond the fundamental and most important purpose of the class. Rule 3 and Rule 19 concern the method of assigning work, but do not cancel, negate, or rescind Rule 1.

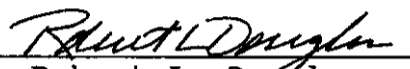
A careful review of the present record indicates that the Carrier abolished the position of Trackman on January 21, 2000. Nevertheless, the Carrier continued to have the substantial amount of primary work ordinarily and customarily performed by a Trackman (such as repairing broken rail, changing out rail defects, filling and lighting switch heaters, and tamping muddy spots at a crossing) performed by other employees. The performance by the other employees of duties that are not their own primary duties may not supersede or infringe upon their own primary duties nor supplant a Trackman.

The record contains unrefuted evidence that the disputed work performed by the Foreman and/or Vehicle Operator constituted a substantial and preponderant amount of the primary duties of a Trackman--not a Foreman and/or a Vehicle Operator--on a day-to-day basis beginning on January 22, 2000. Such work did not constitute incidental work or insignificant work. The record contains unrefuted evidence that the disputed work constituted a substantial amount of the primary work performed by a Trackman. In the absence of an emergency situation or any other extenuating circumstances, a Trackman constituted the appropriate employee to perform the disputed work. Any change to this arrangement is a matter for collective bargaining, not arbitration.

The Organization proved the Claim by a preponderance of the evidence. As to the remedy, the portion of the request of the Organization that the Carrier re-establish the Trackman position on Gang 5C18 is beyond the authority of this Board. The Board, however, grants the monetary portion of the relief sought. Lastly, the Carrier's submission contains a rationalization of work performed and time expended. The Carrier did not make these contentions during the on-property handling of the dispute and the Board may not consider "de novo" arguments and material.

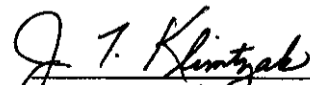
AWARD:

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


D. D. Bartholomay
Employee Member

Dated: April 30, 2004


J. T. Klintzak
Carrier Member
Dissent Attached

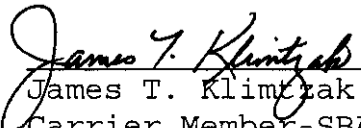
CARRIER'S DISSENT TO
SPECIAL BOARD OF ADJUSTMENT NO. 1110
AWARD NO. 151

The Brotherhood of Maintenance of Way Employees (BMWWE) in its claim asserted that the performance of duties by a Foreman and Vehicle Operator in the absence of a Trackman violated the Agreement.

The Arbitrator rationalized that because there was no Trackman assigned to a Gang, there must have been a violation of the Agreement. The Agreement does not provide exclusive rights to any work for any particular Class of worker in the Craft and no manning levels or Gang complement requirements. Yet, the Arbitrator's decision is based on such premises. Too, the Arbitrator's decision, for lack of clear contract language or a fully developed record of restrictive assignment and performance of work, as well as a BMWWE position based solely on refuted assertions, is based on conjecture, hypothesis and speculation.

The Board was apprised during the hearings of contemporary arbitral decision, adding to the wealth of precedent cited in the Carrier's submission supporting that the claim be denied. See Public Law Board No. 6564, Award No. 10 [BMWWE v. CSXT (Parker), 03/24/04].

Award No. 151 is palpably erroneous and CSXT dissents.


James T. Klimczak
Carrier Member-SBA No. 1110
April 30, 2004