

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 155
Case No. 155

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 the Carrier allowed junior employee M. L. McCord to work on SPG Gang 6XC1 beginning on April 19, 1999 and continuing through May 28, 1999 instead of Mr. J. T. Ferguson, Jr. [System File C021315499/12(99-0456)].

2. As a consequence of the violation referred to in Part (1) above, Claimant J. T. Ferguson, Jr. shall now be compensated for ". . . 79 hours at SPG Trackman rate of \$15.27, at time and one half, plus 22 hours double time, for the work performed between April 19, 1999, and May 28, 1999. Also he is claiming 8 and ½ hours Travel Time. We also request that these days be accredited towards vacation, retirement, and Updated Feb 7. Agreement, dated September 26, 1996."

FINDINGS:

This Board, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended; and

2. That the Board has jurisdiction over this dispute.

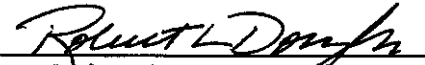
OPINION OF THE BOARD:

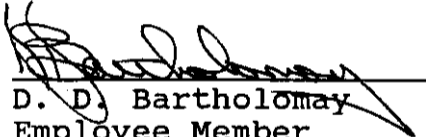
A careful review of the submissions in the present dispute reflects an ongoing factual dispute between the parties concerning the

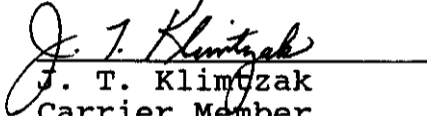
circumstances under which the Claimant left SPG Gang 6XC1 at the end of work on April 15, 1999. The Organization argues that the Claimant did not receive the opportunity to remain on the gang after April 15, 1999 whereas the Carrier maintains that the Claimant voluntarily left the gang at the end of work on April 15, 1999. As a result of the unusual and continuing significant factual dispute in the record involving this matter, no basis exists to resolve this critical disagreement between the parties.

AWARD:

The Claim is dismissed.


Robert L. Douglas
Chairman and Neutral Member


D. D. Bartholomay
Employee Member


J. T. Klimtzak
Carrier Member

Dated: April 30, 2004