

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 33
Case No. 33

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 assigned local forces to perform track surfacing work between Mile Posts 116.2 and 117.2 in the Shelby, Kentucky area, Ashland Seniority District on Friday, May 26, 1995 [System File SPG-TC-9378/12 (95-734) CSX].
2. The Agreement was violated when the Carrier assigned local forces to perform track surfacing work between Mile Posts 116.2 and 117.2 in the Shelby, Kentucky area, Ashland Seniority District on Friday, May 26, 1995 [System File SPG-TC-9375/12 (95-737)].
3. The Agreement was violated when the Carrier assigned local forces to perform track surfacing work between Mile Posts 116.2 and 117.2 in the Shelby, Kentucky area, Ashland Seniority District on Friday, May 26, 1995 [System File SPG-TC-9377/12 (95-735)].
4. The Agreement was violated when the Carrier assigned local forces to perform track surfacing work between Mile Posts 116.2 and 117.2 in the Shelby, Kentucky area, Ashland Seniority District on Friday, May 26, 1995 [System File SPG-TC-9376/12 (95-736)].
5. As a consequence of the violation referred to in Part (1) above, Machine Operator D.G. Ferguson shall be allowed nine and one-half (9.5) hours' pay at the Class 'A' Machine Operator's time and one-half rate.
6. As a consequence of the violations referred to in Part (2) above, Assistant Foreman C.H. Gregory shall be allowed nine and one-half (9.5) hours' pay at the assistant foreman's time and one-half rate.
7. As a consequence of the violation referred to in Part

(3) above, Machine Operator F.D. Guth shall be allowed nine and one-half (9.5) hours' pay at the Class 'A' Machine Operator's time and one-half rate.

8. As a consequence of the violation referred to in Part (4) above, Machine Operator R.J. Kinner shall be allowed nine and one-half (9.5) hours' pay at the Class 'A' Machine Operator's time and one-half rate.

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:

The record indicates that the parties entered a Letter Agreement on September 28, 1993 that updated an arbitrated agreement between the parties concerning the establishment of System Production Gangs to perform production work--including track surfacing work--across former property lines or seniority districts.

The Agreement contains detailed provisions concerning the establishment of rosters, bulletining and filling positions, filling vacancies, filling vacancies pending bulletining and assignment, the form of bulletin, the work week, overtime, lodging, meal allowance, work site reporting, travel allowance and travel advance, national agreements, rates of pay, special rule concerning holidays, claims and grievances, emergency conditions, vacation credits, seniority, work force stabilization, an oversight committee, a non-discrimination clause, labor protection, and the duration of the Agreement.

The preamble of the Agreement provides, in pertinent part, that:

For the purposes of this agreement, production work that may be performed by a SPG, is confined to the following work activities: tie installation and surfacing, surfacing, and rail installation. This definition, however, does not limit the Carrier's right to utilize non-SPG gangs to perform these work activities nor does it limit the Carrier's right to propose and reach mutual agreement that other production

work be performed by SPG's in the future.

A careful review of the Agreement reveals that an annual process occurs to award the positions on the System Production Gangs. As part of the bulletining and awarding of such positions, the Carrier identifies the seniority districts over which the System Production Gangs are programmed to work.

Section 5 of the Agreement, which the parties amended on September 28, 1993, specifies:

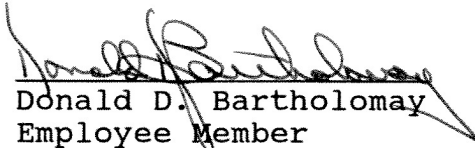
The bulletins advertising SPG positions will identify a proposed schedule of the work to be performed by the particular SPG, and the territory and seniority districts over which the work is programmed.

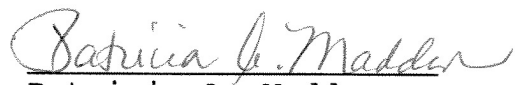
The referenced provision in the preamble of the Agreement explicitly reserves to the Carrier the right to have non-System Production Gangs perform the type of work covered by the Agreement. This is consistent with the fact that the local forces involved have the right to perform any scope-covered work on their seniority district. Under the circumstances involved in this claim, when local forces were available to perform the work at straight time on their regular work day, there was no requirement that the Carrier use SPG forces at overtime on their first rest day.

AWARD:

The Claim is denied.


Robert L. Douglas
Chairman and Neutral Member


Donald D. Bartholomay
Employee Member


Patricia A. Madden
Carrier Member

Dated: October 6, 1999