

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 34
Case No. 34

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 (installing crossings) between Mile Posts 114.0 and 124.0 on the Big Sandy Subdivision on Friday, May 26, 1995 [System File SPG-TC-9373/12 (95-732) CSX].
2. The Agreement was violated when the Carrier assigned local forces to perform track surfacing work (installing crossings) between Mile Posts 114.0 and 124.0 on the Big Sandy Subdivision on Friday, May 26, 1995 [System File SPG-TC-9372/12 (95-731) CSX].
3. As a consequence of the violation referred to in Part (1) above, Machine Operator K. Dorsey shall be allowed eleven and one-half (11.5) hours' pay at the SPG Class 'B' Machine Operator's time and one-half rate.
4. As a consequence of the violation referred to in Part (2) above, Machine Operator D. K. Ashenfelter shall be allowed eleven and one-half (11.5) hours' pay at the SPG 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

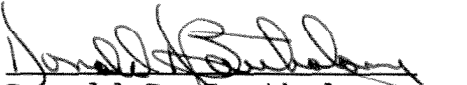
Agreement. This is consistent with the fact that the local forces involved have the right to perform any scope-covered work on their seniority district. Under the circumstances involved in this claim, when local forces were available to perform the work at straight time on their regular work day, there was no requirement that the Carrier use SPG forces at overtime on their first rest day.

AWARD:

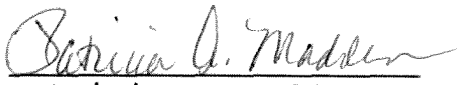
The Claim is denied.



Robert L. Douglas
Chairman and Neutral Member



Donald D. Bartholomay
Employee Member



Patricia A. Madden
Carrier Member

Dated: October 6, 1999



SBA1110-35

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 35
Case No. 35

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 and refused to release employees D. W. Peters, J. N. Jordan and L. C. Cravey to their new positions within fifteen (15) calendar days of April 7, 1995 [System File 21(21)95)/12(95-411) CSX].
2. As a consequence of the aforesaid violation, Claimants D. W. Peters, J. N. Jordan and L. C. Cravey shall each be allowed three hundred dollars (\$300.00).

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 into 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 without regard to 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.

Section 18 of the Agreement provides, in pertinent part, that:

Employees Right to Exercise Seniority
Amended 9/28/93

- A. Employees assigned to SPG positions will have the right to bid and displace to other SPG positions, within their assigned SPG, other SPG's, or positions bulletined on their home road consistent with their existing rights under their home road agreement. SPG employees awarded a position on another SPG or a position on the employees home road will be released to the new positions within fifteen (15) calendar days following the awarding of the position.
- B. If the employee is not released to his new position within the fifteen (15) day period provided above, he shall receive three hundred dollars (\$300) per week held in addition to all allowances provided for herein, provided he has advised his Foreman of his assignment to such new position.

Section 18 expressly specifies that the release of employees from their current positions will occur "within fifteen (15) calendar days following the awarding of the position." The triggering event for the fifteen day period occurs on the date of "the awarding of the position" by the Carrier.

In the present case the Company awarded the relevant positions to the Claimants in an award bulletin on April 7, 1995. The Carrier therefore had fifteen days to effectuate the releases of the Claimants from SPG 6XT1 to SPG 6XS1. The relevant fifteen-day period ended on April 22, 1995. The Carrier, however, failed to comply with the fifteen-day requirement because the releases did not occur until April 25, 1995. As a result, the Carrier violated Section 18 of the Agreement.

The record omits any persuasive evidence that the collective bargaining agreement provided the Carrier with the right to differentiate between the award date of the position (April 7, 1995) and the effective date for the time of assignment (April 17, 1995). Section 18 only refers to the award date. The

Carrier therefore must comply with the Section 18 requirement. The Carrier failed to do so under the precise facts of the present case. Any change to the contractual requirement is a matter for collective bargaining, not arbitration.

The Third Division determination in Award No. 31506 (May 23, 1996) (Richter, Referee) lacks persuasiveness because the record in that case indicated that the relevant position did not exist during the entire initial fifteen-day period. As a result, the reasoning in Award No. 31506 does not control the outcome in the present case.

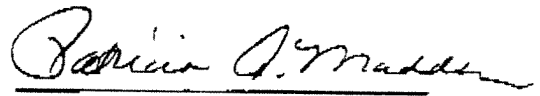
With respect to the requested remedy, Section 18(B) provides for a payment to a Claimant of "three hundred dollars (\$300) per week held" when a violation occurs of Section 18(A). In the present case the record indicates that the Carrier held the Claimants for only three extra days because the actual release occurred on April 25, 1995 instead of by April 22, 1995. Section 18(B) provides for a \$300 payment per week. The Claimants did not remain in their original positions for a full week. Section 18(B) omits any authorization to provide for a pro rata remedy and further omits any suggestion that the Carrier must make a \$300 payment for failing to release an employee for less than one week. As a consequence, the Union failed to prove that the Claimants had a contractual right to receive a \$300 payment under the special circumstances of the present case.

AWARD:

The Claim is sustained in accordance with the Opinion of the Board. The Carrier shall make the Award effective on or before 30 days following the date of this Award.


Robert L. Douglas
Chairman and Neutral Member


Donald D. Bartholomay
Employee Member


Patricia A. Madden
Carrier Member

Dated: 2-8-2000