

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 37
Case No. 37

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and

CSX Transportation, Inc. (formerly the Chesapeake and
Ohio Railway Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it failed and refused to assign a B&B employe to a foreman inspector position when an outside concern was used to pave a new road, etc., at the Huntington Shops in Huntington West Virginia, on November 14, 15 and 16, 1994 [System Files C-TC-5911-B&B/12(95-148) and C-TC-5913-B&B/12 (95-0149) COS].
2. As a consequence of the violation referred to in Part (1) above, B&B employes M. Dial, C. Perry, J. Comer and I. Wiley shall each receive an equal proportionate share of the one hundred thirty-six (136) hours expended on November 14, 15 and 16, 1994 at the B&B foreman inspector's rate of pay.

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:

This dispute involves the performance of certain paving work on a new road by outside forces and the failure of the Carrier to assign the Claimants to serve as inspectors during the performance of such work.

Rule 83(b) provides, in pertinent part, that:

Where maintenance work coming under the
provisions of this agreement which has

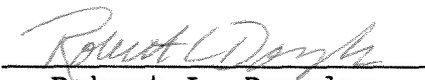
customarily been performed by employees of the railway company is let to contract, the railway company will place an extra force foreman in charge of the work if the contracted work is roadway or track work. If the contracted work is bridges and structures work, a B&B foreman will be assigned with the contract force if the job is such as would justify assignment of a foreman if the railway company were doing the work with its own forces.

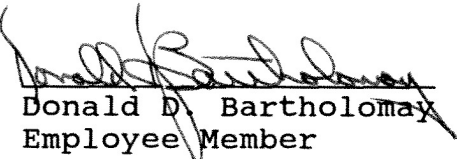
The first claim indicates that the alleged violation relates to the failure of the Carrier to assign the Claimants to perform inspection work. As a result, the present dispute does not concern the validity of the determination of the Carrier to use outside forces to perform the paving work.


Rule 83(b) initially requires a finding of whether the members of the bargaining unit customarily performed new paving work. The record omits any credible evidence that members of the bargaining unit customarily performed new paving work. In the absence of such credible evidence in the present case, the Organization perforce failed to prove that Rule 83(b) required the Carrier to assign the Claimants to serve as inspectors.

AWARD:

The Claim is denied in accordance with the Opinion of the Board.


Robert L. Douglas
Chairman and Neutral Member


Donald D. Bartholomay
Employee Member


Patricia A. Madden
Carrier Member

Dated: October 6, 1999