

SPECIAL BOARD OF ADJUSTMENT NO. 1110

Award No. 48

Case No. 48

PARTIES TO THE DISPUTE:

BROTHERHOOD OF MAINTENANCE WAY EMPLOYEES

and

CSX TRANSPORTATION, INC. (Former Louisville
and Nashville Railroad Company).

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned officials from the Mechanical and Engineering Departments and a trainmaster to perform the maintenance work of cleaning debris from the Carrier's right of way between Mile Posts N-94.0 and N-97.0 in Bruceton Yard on the Nashville Division on August 22, 1995, instead of assigning Track Repairmen R. A. Foster, L. J. Flake and R. W. Manley to perform said work [System File 14(65)(95)/12(96-6) LNR].
2. As a consequence of the aforesaid violation, Track Repairmen R. A. Foster, L. J. Flake and R. W. Manley shall each be allowed eight (8) hours' pay at their straight time rate.

FINDINGS:

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

1. That the Carrier and Employees involved 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.
3. Claimants have established and hold seniority as track repairmen in the Track Subdepartment. Claimants were furloughed

and awaiting recall to the Carrier's service when the incident in dispute arose.

4. The Organization asserts that on August 22, 1995, the Carrier allowed officials from the Mechanical Department, Engineering Department and a Train master, none of whom hold any seniority under the Agreement, to perform the maintenance work of cleaning debris from its right of way. The Organization claims that said employees expended 8 hours each on the claim date. The Organization points out that the mechanical engineering officials and train master do not hold any seniority in the Track Subdepartment.

5. The Organization contends that under Rule 1 and 2 of the Agreement, Maintenance of Way and Structures Department employees "shall perform all work in the Maintenance of Way and Structures Department". The Organization argues that the Carrier violated the Agreement by assigning employees and/or supervisor from outside the Agreement to perform work reserved to those covered thereby.

6. The Organization contends that the Carrier's assignment of outside forces resulted in the definite loss of work opportunity in related monetary benefits to Claimants. The Organization asserts that the Claimants are entitled to receive reparations in the amount they would have received had they been assigned to perform the routine maintenance work in question.

7. The Carrier contends that the dispute is over a "Safety Committee" cleaning debris from along the right of way in Bruceton Yard in Nashville, Tennessee during a "clean sweep" of the yard and facilities. The Carrier argues that it is well-established by arbitral precedent that cleaning debris from a yard is not exclusive to any craft, nor is it exclusive to contract employees. Citing authority, the Carrier argues that the Third Division has recognized the absence of exclusivity in this work in a number of awards.

8. The Carrier points out that the Organization has not even attempted to prove in this dispute that Claimants or any other Maintenance of Way employees exclusively clean up debris at Bruceton Yard. The Carrier additionally claims that the fact that


Claimants were furloughed in August 1995 is irrelevant.

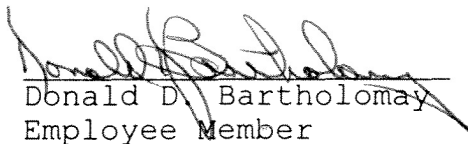
OPINION:


The Board is persuaded that Claimants are not contractually entitled to perform the work that was performed, a "clean sweep" of the Bruceton Yard on the claim date. (See PLB No. 3149, Award No. 10 & Third Division Award No. 26453). The Awards relied on by the Organization are not controlling. Award Nos. 30160 and 31061 involved the former C&O Agreement in which Rule 66(b) reserved the work of "mowing and cleaning [the] right of way" to Section gangs. As the carrier accurately points out, there is no such provision in the L&N Agreement.

AWARD:

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


E. William Hockenberry
Chairman and Neutral Member


Donald D. Bartholomay
Employee Member


Patricia A. Madden
Carrier Member

Dated: OCT 25 1999