

SPECIAL BOARD OF ADJUSTMENT NO. 1110

Award No. 51  
Case No. 51

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 Rank 3 Dozer Operator J. W. Siples to operate a Rank 4 Bush Hog at Goulding Yard in Pensacola, Florida August 6, 7 and 9, 1995 instead of assigning furloughed Rank 4 Operator G. R. Smith [System File 19(16)(95)/12(96-147 LNR].
2. As a consequence of the violation referred to in Part (1) above, Rank 4 Operator G. R. Smith shall be allowed twenty-four (24) hours of pay at the bush hog operator's 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. The Organization argues that the Carrier violated Rule 22(d)(1) of the Agreement when it filled a temporary vacancy as a Rank 4 Machine Operator by using J.W. Siples, who was regularly assigned as a Rank 3 Machine Operator on a Rank 3 Dozer, instead of Claimant, who was furloughed. The Organization claims that the Carrier utilized Mr. Siples for eight hours on the claim dates to

operate the Rank 4 Bush Hog. The Carrier asserts that Claimant was qualified, available and willing to fill the position.

4. The Organization argues that Rule 22(d)(1) governs the dispute and that Claimant is entitled to receive compensation in the amount he would have received had his seniority been properly respected.

5. The Carrier argues that Rule 22(d)(1) applies to "temporary or extra" work; there is no evidence in the record that the work performed by Mr. Siples was "temporary or extra". The Carrier points out that Mr. Siples was operating a bull-dozer mounted brush cutter, which became inoperable. While the machine was being repaired, Mr. Siples continued the same work, operating a tractor mounted bush hog. In denying the claim, the Carrier asserted that "noting in the Agreement precludes an employee [from] operating another machine when one is broken down, especially when it is doing the same work".

6. The Carrier argues that, in any event, Rule 22(d)(1) is inapplicable: it specifically refers to vacancies of five days or more. The carrier points out that the "vacancy" alleged by the Organization was for three days. The Carrier also contends that the evidence reveals that on one of those dates - August 6 - Mr. Siples did not perform any work. As such, Claimant's claim can only be for two days of work, not three.

7. The Carrier further asserts that it had no record of Claimant's compliance with Rule 21(g), and that Claimant had allowed his medical qualification to lapse.


#### OPINION:

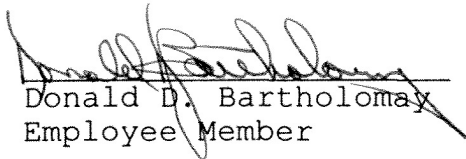
The Board is not persuaded that the evidence supports the Organization's contention that Mr. Siples was assigned to perform "temporary or extra" work within the meaning of Rule 21(d)(1). The evidence indicates that the machinery with which Mr. Siples had been working broke down; he was directed to continue performing the same work - brush cutting - on a different machine while repairs were undertaken to his machine. As such, no "temporary vacancy" occurred as alleged by the Organization which would have triggered


an obligation on the part of the Carrier to abide by seniority requirements set forth in the 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