

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 54
Case No. 54

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 failed to properly compensate the members of SPG Gang 5XS1 for overtime service performed on March 27, 1996 [System File 21(10)(96)/12(96-521) CSX].
2. As a consequence of the above-stated violation, each affected member of SPG Gang 5XS1 shall each be allowed two (2) hours and forty (40) minutes' pay at their respective time and one-half rates, minus the one and one-half (1 1/2) hour straight time pay they had each already received."

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 indicates that the Claimants performed their normal duties on March 27, 1996 and later that evening--after their regular ten hour shift had ended--attended a required safety meeting, which lasted from 7:00 p.m. to 8:30 p.m.

Section 7 of the Agreement provides:

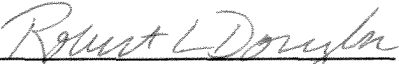
B. The right to work overtime, when required on System Gangs, will accrue first to the incumbent of the position of which the overtime is required. If declined by the incumbent, overtime will be performed by the senior qualified employee in the System Gang indicating a desire to work overtime. If no employee desires to work overtime and overtime is required, the junior qualified employee in the System Gang involved will work the overtime.

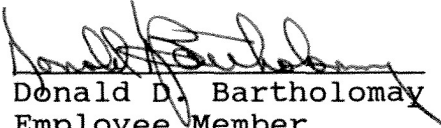
The Agreement, however, omits any provision that expressly provides that attending mandatory safety meetings constitutes "work, time, or service" so as to trigger overtime compensation. In the absence of such a provision or evidence of a binding past practice, the record fails to prove that the Claimants had a contractual right to receive overtime compensation, rather than straight time compensation for attending the mandatory safety meetings. Under these special circumstances the Board lacks the

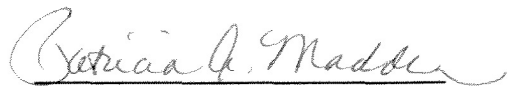
right to find that such a requirement to pay overtime exists for attending such mandatory safety meetings.

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