

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 57
Case No. 57

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 junior Machine Operator T. L. Swartz to perform work stream cleaning gang equipment for SPG Force 5XT4 on October 4, 5, and 6, 1996 [System File SPG-TC-1815/12 (961502) CSX].
2. As a consequence of the violation referred to in Part (1) above, Claimant R. D. Mackereth shall be allowed thirty-nine (39) hours' pay at the applicable Class 'A' Machine Operator 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:

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.

A careful review of the record indicates that the Carrier assigned a junior employee to perform the disputed work, which involved steam cleaning certain equipment. Due to the nature of the disputed work, Machine Operator Swartz did not occupy the status of an incumbent.

The record omits any evidence that the Carrier had notified the Claimant at any time in any manner about the possibility of performing the disputed work. The Claimant therefore had no reason to anticipate at the relevant time that he should notify a supervisor that he was ready, willing, and able to perform the disputed work. Although the written statement confirming the Claimant's availability appears in the record as a letter, dated October 13, 1997, and is therefore potentially suspect as a self-serving statement, the Carrier failed in any way to prove that an appropriate representative of the Carrier had informed the Claimant about the opportunity to perform the disputed work before the work began on October 4, 1996. As a result, the Carrier failed to rebut the Claimant's representation of his availability to perform the disputed work by proving that the Claimant either had declined to be considered to perform the disputed work or had remained silent when advised of the possibility of performing the disputed work.

Under these special circumstances the record proves that the Carrier violated the Agreement. The record omits any indication that the Carrier questioned the propriety of the requested remedy when the parties had processed the claim on the property. As a result, the remedy sought by the Claimant shall be implemented.

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: October 6, 1999