

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 59
Case No. 59

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 division forces to perform work removing the road crossing at London Road, Mt. Sterling, Ohio on Sunday, October 6, 1996, instead of calling and assigning the Claimants who were available [System File S-TC-2180/12 (96-1325) CSX].
2. As a consequence of the violation referred to in Part (1) above, employees S. Fryman, R. G. Reed and M.J. Gilman shall "each be allowed five and one-half (5.5) hours' pay at their respective time and one-half rates."

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 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 reveals that an annual process occurs to award the positions on the System Production Gangs. As part of the bulletining and awarding of such positions, the Carrier identifies the seniority districts over which the System Production Gangs are programmed to work.

Section 5 of the Agreement, which the parties amended on September 28, 1993, specifies:

The bulletins advertising SPG positions will identify a proposed schedule of the work to be performed by the particular SPG, and the territory and seniority districts over which the work is programmed.

The referenced provision in the preamble of the Agreement explicitly reserves to the Carrier the right to have non-System Production Gangs perform the type of work covered by the Agreement. This is consistent with the fact that the local forces involved have the right to perform any scope-covered work on their seniority district.

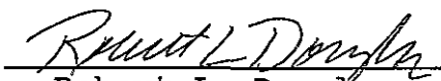
As set forth above, the parties defined the term "production work" in the September 23, 1993 Agreement. The present dispute involves removal work which is different from "tie installation and surfacing, surfacing, and rail installation." As a result, the removal work constitutes peripheral work that must be performed before the work covered by the Agreement.

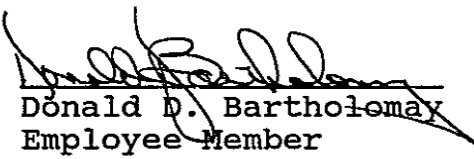
Under the circumstances involved in this claim, the local forces were available to perform the disputed work on their regular rest

day on Sunday, October 6, 1996. The Agreement omits any requirement that the Carrier had a duty to arrange to have the SPG forces return early to the area on their regular rest day on Sunday, October 6, 1996 to perform the disputed work. The Carrier therefore retained the discretion to assign local forces to perform such removal work.

AWARD:

The Claim is denied.


Robert L. Douglas
Chairman and Neutral Member


Donald D. Bartholomay
Employee Member


Mark D. Selbert
Carrier Member

Dated: Nov. 2, 2000