

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 60
Case No. 60

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 local forces to perform preplanned and preprogrammed SPG work, i.e., track surfacing work at Winchester, Virginia on Friday, May 30 and Saturday, May 31, 1997 [System File SPG-TC-1444/12 (97-1668) CSX].
2. As a consequence of the above-stated violation, Machine Operator K. L. Jennings shall be allowed twenty (20) hours' pay at the SPG Class 'A' Machine Operator's 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:

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 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.

Section 7 (Overtime) 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 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.


The present dispute involves a single employee operating tamper and ballast regulator equipment. Under the circumstances involved in this claim, when a member of the local forces was available to perform the disputed work within the seniority district at straight time on the regular work day, there was no requirement pursuant to Section 7 or any other provision in the Agreement that the Carrier use a member of the SPG forces at overtime on the individual's first rest day. The further performance of the disputed work on Saturday, May 31, 1997 by the member of the local forces within the seniority district merely constituted a continuation of the work performed by the member of the local forces on Friday, May 30, 1997 and therefore did not constitute a cognizable violation of the existing Agreement.


Third Division Award 31366 (February 29, 1996) is distinguishable from the present situation because in that case three employees from the local forces worked the relevant Friday, Saturday, and Sunday and the Adjustment Board specifically found that the Carrier's purpose in working the local forces was to avoid paying the successful Claimants overtime. In the present case, the record is silent about the Carrier's reason for using the local forces instead of the Claimant. The Organization therefore failed to prove that avoiding the payment of overtime to the Claimant constituted the Carrier's reason for using the local forces instead of the Claimant.

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