

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 65

Case No. 65

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 Carrier violated the agreement when it assigned junior employee R. L. Taylor to perform overtime work on SPG Gang 6CX2 on October 31, November 1, 2, 7, 8 and 9, 1997, instead of assigning Mr. A. H. Shelton who was senior and available to perform said work [System File 21(72)(97)/12 (97-2770) CSX].
2. As a consequence of the violation referred to in Part (1) above, Claimant A. H. Shelton shall be allowed seventy-one and one-half (71.5) hours' pay at the overtime 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 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.

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 repeated overtime work loading and unloading rail at Chester, South Carolina to prepare for the next week's work on the curve patch gang. Due to the nature of the disputed work, the Carrier should have offered the disputed overtime work to the Claimant, who held greater seniority as the senior qualified employee, pursuant to the requirements of Section 7 of the Agreement.

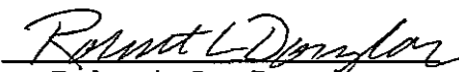
The record fails to prove that the Carrier had notified the Claimant in an appropriate manner about the possibility of performing the disputed work. The Claimant therefore had no reason to anticipate at the relevant time that he should notify a supervisor that he was ready, willing, and able to perform the disputed work or that he should report to work at the appropriate times. More specifically, the Carrier failed to prove that an appropriate representative of the Carrier had


informed the Claimant in advance about the opportunity to perform the disputed work. As a result, the Carrier failed to rebut the Claimant's representation that he had not received such advance notice. In addition, 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


Mark D. Selbert
Carrier Member

Dated: Nov. 2, 2000