

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 75  
Case No. 75

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees  
and

CSX Transportation, Inc. (former Louisville and  
Nashville Railroad Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned St. Louis Seniority District forces to perform work on the Henderson Seniority District on January 4, 10, 11 and 17, 1996, instead of recalling and assigning furloughed Henderson Seniority District Track Repairmen G. E. Babb and L. D. Greenwell to perform said work [System File 3(4)(96)/12 (96-873) LNR].
2. As a consequence of the violation referred to in Part (1) above, Claimants G. E. Babb and L. D. Greenwell shall each be allowed thirty-two ((32) hours' pay at their straight time rate and they shall each receive four (4) days' credit for vacation and one (1) month's credit for retirement benefits.

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 proves by a fair preponderance of the credible evidence that the Carrier used employees from a different

seniority district to perform the disputed work, which involved the removal of snow from switches.

Rule 10 (Transfer From One Seniority District to Another) provides, in pertinent part:

(a) If it should be essential, in the opinion of the Management, to efficient operation to transfer an employee from one seniority district to another in the same subdepartment, that may be done. Individual employees or gangs will not be transferred out of their respective seniority districts to another district, except under the following conditions:

1. In emergencies;
2. When there are no cut off employees in the same class in the seniority district to which the transfer is made . . . .

In commenting on the affirmative defense of emergency, the Third Division (Award 17795) (March 27, 1970) observed:

We have held that in an emergency the Carrier should be permitted to exercise latitude in meeting the situation. There is nothing in the record to indicate that Carrier's purpose in the use of employees of another seniority district was to evade the application of the seniority principle or to circumvent the Agreement.

The record indicates that the Carrier asserted that an emergency existed due to weather conditions. The Carrier had the burden to prove this affirmative defense. The Division Engineer raised the emergency defense in a letter dated June 17, 1996:

Our investigation reveals that heavy snows and high winds on these dates forced the Central City section force to remain at Atkinson. Due to unsafe highway conditions and road closings [sic] they remained at this location and assisted [sic] HD employees remove snow from switches. However if necessary they would accompany a train if switches had to be swept out on the MH & E or O & N Subdivisions.

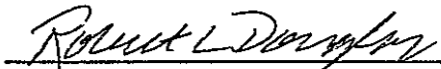
The Organization submitted a single letter, dated May 28, 1997, from an employee, M. McCarty, that disputed the existence of an emergency because he and other employees were able to drive long

distances to work.

A careful review of the conflicting evidence reveals that the Division Engineer described the results of the investigation within five months of the critical events whereas Mr. McCarty submitted a letter almost one year after the Division Engineer's letter or seventeen months after the critical events. The contents of the Division Engineer's letter are inherently more reliable because of the substantially closer proximity to the relevant events. As a result, a preponderance of the credible evidence substantiates that an emergency existed within the meaning of Rule 10. The Organization therefore failed to prove that a violation of the Agreement had occurred.

AWARD:

The Claim is denied in accordance with the Opinion of the Board.

  
Robert L. Douglas  
Chairman and Neutral Member

  
Donald D. Bartholomay  
Employee Member

  
Mark D. Selbert  
Carrier Member

Dated: Nov. 2, 2000