

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 77
Case No. 77

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 allowed Machine Operator Hobart Hardin to fill a temporary track repairman position on Section Gang 5K22 at Cave City, Kentucky commencing January 2, 1996 and continuing instead of assigning furloughed Track Repairman E. E. Coomer [System File 10(4)(96)/12(96-683) LNR].

2. As a consequence of the aforesaid violation, furloughed Track Repairman E. E. Comer 'Should be paid 8 hours straight time for January 2, 1996 and then each work day forward and continuous until this violation stops. The claimant should also be paid all overtime made by this position including 15 hours that has already accumulated. Each date should also be counted as time worked by the claimant for the purpose of qualifying for vacation and should be counted toward his retirement. ***'

FINDINGS:

This Board, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees 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 Agreement reflects different categories of employees. In the present case, the Carrier retained a Machine Operator in a temporary Track Repairman's position after the Carrier had sent the crane, which the Machine Operator had used, to a different seniority district. The Machine Operator held seniority in the Track Subdepartment Rank No. 3 as a Crane Operator whereas the Claimant held seniority in Track Subdepartment Rank No. 6 as a Track Repairman. The Carrier elected not to abolish the referenced Machine Operator position to permit the incumbent to exercise his seniority and obtain a different position by displacing a junior employee.

Rule 22(e) provides:

In filling temporary vacancies of section or extra gang repairmen that are expected to last less than 50 working days, the senior cut-off man in the gang in which the temporary vacancy occurs will be called, if reasonably available; and if there are no cut-off men in that particular gang, the senior cut-off man or men in the seniority district will be called. It is optional with the division officials as to whether they will require the senior man to take the work.

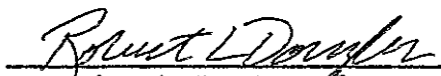
The crossing of ranks within subdepartments under the circumstances of the present dispute violated the fundamental seniority arrangement inherent in the subdepartment rank structure as developed by the parties over an extended period of time. The record omits any basis for deviating from the presumptive validity and integrity of this arrangement. As a result, the Carrier's actions in the present case constituted a violation of the Agreement.

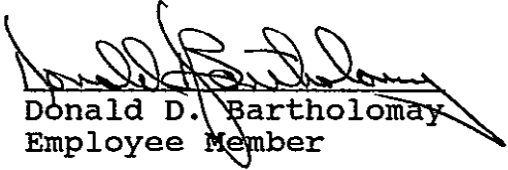
As a remedy, the Claimant shall receive the requested remedy. This formulation of the remedy provides a basis to make the Claimant whole for the failure of the Carrier to place the Claimant in the appropriate position for the relevant period of time.

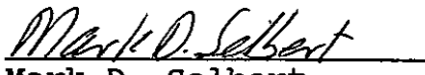
AWARD:

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