

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 92
Case No. 92

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 Section Gang 5C17 members R. M. Burkhart, S. R. Hurst, H. D. Banks and J. D. Robinson, who hold seniority on the CV Subdivision, to perform track work on the K&A Subdivision on September 3, 4, 5, 9, 10, 11, and 12, 1996, instead of assigning furloughed K&A employees to perform said work [System File 7(30) (96)/12(97-161) LNR].

2. As a consequence of the violation referred to in Part (1) above, the four (4) senior furloughed Track Subdepartment employees on the K&A Subdivision shall each be allowed:

. . . seventy (70) hours straight time each and eighteen (18) hours overtime each at the Track Repairman's respective straight time and time and one-half rates of pay for the dates of September 3, 4, 5, 9, 10, 11 and 12, 1996. These days should also count toward the required number of days to qualify for a vacation and the month of September, 1996 should be credited to their Railroad Retirement months.

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 Carrier has acknowledged and 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 track work (building switches). Specifically, the record substantiates that the out-of-district employees from the Cumberland Valley Subdivision performed the disputed work during the referenced period on the Knoxville and Atlanta Subdivision.

Rule 10, which relates to transfers from one seniority district to another, provides in pertinent part that:

(a) If it should be essential, in the opinion of the Management, to efficient operation to transfer an employe from one seniority district to another in the same subdepartment, that may be done. Individual employes 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 employes in the same class in the seniority district to which the transfer is made;

The present dispute therefore narrows to whether eligible furloughed Claimants existed from the Knoxville and Atlanta Subdivision that precluded the Carrier from assigning employees from the Cumberland Valley Subdivision to perform the disputed work.

The record indicates that during the handling on the property the Organization identified only one Claimant from the Knoxville and Atlanta Subdivision and that this particular Claimant, M. A. Scates, had not become medically qualified to return to work at the time because he had not satisfied the requirement regarding a medical physical examination. As a result, Claimant Scates lacked a critical requirement to be considered eligible to have performed the disputed work during the relevant time period covered by the Claim.

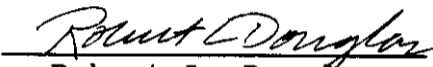
The submissions in the present dispute further reflect an ongoing factual dispute between the parties concerning the existence of any other employees from the Knoxville and Atlanta Subdivision on furlough status at the relevant time. A continuing significant factual dispute in the record exists about this critical point concerning the existence of any other qualified Claimant on furlough status from the Knoxville and Atlanta Subdivision. As a result, no basis exists in the record developed by the parties to resolve an essential element of the remaining disagreement

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between the parties about a fundamental aspect of the dispute.

AWARD:

The Claim is denied regarding Claimant M. A. Scates and is dismissed regarding any other potential Claimants.


Robert L. Douglas
Chairman and Neutral Member


Donald D. Bartholomay
Employee Member


Mark D. Selbert
Carrier Member

Dated: 5/14/01