

PUBLIC LAW BOARD NUMBER 4138

Award Number: 3

Case Number: 3

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

. CSX TRANSPORTATION INC.

STATEMENT OF CLAIM

Claimants R. M. Myers and D. L. Hammac should be paid eight hours straight time at track repairmen's rate of pay from November 18, 1985.

FINDINGS

On December 13, 1985, the Organization filed claims on behalf of the Claimants (both of whom are furloughed Track Repairmen), seeking compensation on the grounds that Carrier used Welders to perform track repair work on November 18, 1985, in violation of the Agreement.

The issue to be decided in this dispute is whether Carrier violated the Agreement by using Welders to perform track repair and if so, whether the Claimants are entitled to the relief sought.

The position of the Organization is that Carrier violated the Agreement by allowing Welders to perform track repair duties on the date in question. The Organization contends that Welder G. Osborne and Welder Helper C. Levan performed track subdepartment work reserved for the Claimants' class under the Agreement. The Organization maintains that Carrier's actions clearly

violated the Agreement and cites several awards holding that Carrier may not use its employees in a manner that trespasses on the rights of other track subdepartment employees.

The position of the Carrier is that no violation of the Agreement occurred on the date in question and that the Claimants are not entitled to any compensation on that basis.

Initially, Carrier contends that Claimant Myers' claim is entirely without merit, since he could have exercised his seniority to displace into a position rather than be furloughed. Carrier argues therefore that Myers' assertion of entitlement to the work in question is baseless.

Carrier further argues that neither Osborne nor Levan performed work other than welding subdepartment work, and therefore there was no violation of the Agreement. Carrier contends that the Organization has failed to establish any work outside of welding work performed by Osborne and Levan; and further contends that even if track subdepartment work was required on the date in question, which it denies, there is no reason why the Claimants would have been used, since other track subdepartment employees were available. Finally, Carrier contends that if any track subdepartment work was performed by Osborne and Levan, it was done without instruction by Carrier; and that work done in that regard, if any, was voluntarily performed and therefore not actionable.

After review of the record, the Board finds that the Organization's claim must be denied.

The Organization has failed, as is its burden, to establish that welders performed track subdepartment work in violation of the Agreement. The Organization's mere assertion that Osborne and Levan performed track subdepartment work is not sufficient to support the claim. The Organization has further failed in all respects to establish that the Claimants would have been entitled to perform the work in question if in fact it had been available. The Claimants, as furloughed track subdepartment employees, would only have been entitled to perform the alleged work if no available track subdepartment employees were present, which the Organization has further failed to establish. In sum, we find no basis upon which compensation should be awarded to the Claimants.

AWARD

Claim denied.

Nicholas Burns  
Neutral Member

L. Womble  
Carrier Member

Bryce L. Hall & dissent  
Organization Member

DATE: February 1, 1988