PUBLIC LAW BOARD NO. 5980

PARTIES TO DISPUTE) **UNITED TRANSPORTATION UNION - YARDMASTER DEPT.**
CSX TRANSPORTATION, INC. (FORMER L&N RR CO.)

STATEMENT OF CLAIMS:

CASE NO. 1

Claim of Yardmaster S. S. Kirkpatrick of Louisville, KY for all money paid under CSX Crew Consist Agreement and the right to make a choice knowing all the facts that deprived Yardmaster Kirkpatrick.

CASE NO. 2

Claim of Yardmaster B. H. Wright of Louisville, KY for all money paid under CSX Crew Consist Agreement and the right to make a choice knowing all the facts that deprived Yardmaster Wright.

CASE NO. 3

Claim of Yardmaster D. E. Peebles of Louisville, KY for all money paid under CSX Crew Consist Agreement and the right to make a choice knowing all the facts that deprived Yardmaster Peebles.

CASE NO. 4

Claim of Yardmaster J. L. Thomas of Louisville, KY for all money paid under CSX Crew Consist Agreement and the right to make a choice knowing all the facts that deprived Yardmaster Thomas.

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

The claims involve a like determination as to the meaning and application of the language of an Agreement between the Carrier and its employees in train service represented by the

United Transportation Union (CSXT Labor Agreement 4-86-92) concerning train crew size manning requirements.

Under certain terms and conditions of the aforementioned agreement, employees holding yardmaster positions were given a 14-day period of time from the implementation date of such agreement to exercise retained seniority rights in train service in order to qualify for the financial incentives or monetary allowances provided therein for the acceleration of reductions needed to reach a crew size of conductor-only to operate trains. In part here pertinent, this agreement language reads as follows:

> In the application of these agreements, protected employees holding official positions or yardmaster positions will have a period of fourteen (14) days from the implementation date to exercise their seniority and return to service covered by this agreement in order to qualify for the monetary allowances provided therein.

The agreement was implemented on August 10, 1992. The Claimants, who were working at such time as yardmasters, thus had 14 days, or until August 25, 1992, to exercise their retained train service seniority so as to be an "active service" employee entitled to the monetary allowances of that agreement. None of the four claimants made an election to leave a yardmaster position in a return to train service.

The instant claims were filed on September 18, 1995. This filing comes more than three years after the implementation of Labor Agreement 4-86-92, or a date that is far beyond the above-mentioned 14-day provisions of the agreement. It is also a date that falls outside the time constraints of Rule 15(a) of the Schedule Agreement for the filing of a claim or grievance. Rule 15(a), in part here pertinent, reads:

> All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the carrier authorized to receive same, within 60 calendar days from the date of the occurrence on which claim or grievance is based.

The Claimants and the Organization on their behalf challenge the contention that the claims were not filed in a timely manner. In this respect, it is asserted that at the time Labor Agreement 4-86-92 was implemented that the Claimants were told by a Carrier official that employees who were working positions as yardmasters and elected to return to train service pursuant to such agreement would not be allowed to again return to work as or be promoted to positions as yardmaster. This statement by a Carrier official, the Claimants assert, was "a strong deterrent in making our decisions" not to return to train service. However, contrary to what they say they were told, the Claimants submit that the Carrier did come to allow "a select few" yardmaster employees who exercised seniority in a return to train service when the agreement was implemented to subsequently return to positions of yardmaster. Hence, it is urged that the Claimants were subjected to

disparate treatment, and that upon learning of such that they timely filed the claims here at issue.

The Carrier does not deny that a review of records shows that three employees did in fact return to yardmaster positions after leaving such positions pursuant to the time constraints of Labor Agreement 4-86-92 so as to be an active train service employee eligible for the crew reduction monetary allowances. However, the Carrier says that these employees somehow "slipped through the cracks" contrary to the dictates of the aforementioned directive, and that when the error or mistake that permitted such a happenstance to occur was brought to its attention that it took such corrective action as could be taken under the circumstances existent at the time. In this regard, the Board finds no reason to hold that the return of a few employees to yardmaster positions was other than the consequence of unintended error.

Under the circumstances, the Board finds that the instant claims must be denied for a failure to be in compliance with the time limits as prescribed within the aforementioned agreements.

AWARD:

Claims denied.

Robert E. Peterson
Chair & Neutral Member

Dannie E. Strickland
Carrier Member

Donald R. Carver
Organization Member

Jacksonville, FL
November 30, 1998