

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42782
Docket No. MW-43440
17-3-NRAB-00003-160132**

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to call or assign Claimant C. Dickey to perform overtime flagging duties between Mile Posts BI 188.2 and BI 192.0 on the Akron West Seniority District on August 23 and 24, 2014 and instead assigned such work to junior employee B. Morgan and mobile employee D. Coffin thereto (System File H42411514/2014-175621 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Dickey shall now be compensated for twenty-six (26) hours at the applicable overtime rate of pay.”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Organization has filed this claim contending that the Carrier, on Saturday and Sunday, August 23 and 24, 2014, called employees other than Claimant to perform flagging work on an overtime basis. The Organization asserts Claimant was the senior assistant foreman on the district, and was thereby entitled to preference for the overtime assignment.

The Carrier has replied that it attempted to phone Claimant on August 23, but received no answer. It also denies that flagging work occurred on August 24. In support of these contentions, the Carrier has submitted an email statement from Roadmaster Timothy Jensen stating:

“08-23-14

Yes the work took place

Yes it was flagging

Mr. Dickey was called and did not answer the phone. He was called Friday evening.

08-24-14

No the work did not take place

Mr. Coffin did not work on 08-24-14

I had nothing in my daily notes of him working and there is no pay for him on 08-24-14”

There is nothing in the record to refute the Carrier’s statement that no flagging took place on August 24, 2014. Claimant stated that he was told by another employee that Mr. Coffin worked that day, but he admitted that he had not checked the time records and would concede if the records did not show Mr. Coffin working. With respect to August 23, Claimant stated he was told by Roadmaster Sanders on August 22, 2014 that there was not going to be any flagging work over the weekend, but acknowledged that he had no phone records to demonstrate that Roadmaster Jensen had not attempted to call him.

On the basis of the record before us, we cannot find that the Organization has established that the Carrier failed to call Claimant for work he was entitled to perform. The Agreement was not violated.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 28th day of November 2017.