

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44043  
Docket No. MW-44102  
20-3-NRAB-00003-170193**

**The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens 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 offered preference to and assigned Foreman M. Strickler to perform track inspector work between Mile Post BI 73.9 and Mile Post BI 124.7 on the Akron West Seniority District, Great Lakes Division on Monday, February 23, 2015 instead of calling and assigning Track Inspector D. Lambert thereto (System File H42404615/2015-185379 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Lambert shall be compensated eleven (11) hours at his respective 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 Claimant holds seniority in the Carrier's Maintenance of Way Department. During the time in question, he was regularly assigned as a track inspector headquartered in Defiance, Ohio. Employee M. Strickler also maintains seniority in the Carrier's Maintenance of Way Department. There is no dispute here that the Claimant is senior to employee Strickler in the track inspector classification.

On Monday, February 23, 2015, the Carrier made calls to bid-in Track Inspectors for track inspection work. After the call out list was exhausted, Employee Strickler was assigned to perform the work and performed a total of eleven hours of overtime in the performance of this work.

The Organization filed a claim asserting that the Claimant was entitled to the work by virtue of his superior seniority. The Carrier denied the claim on the basis that there was no violation of the Agreement. The parties were unable to resolve the dispute on-property and the claim is now properly before this Board for final adjudication.

The Organization contends that the Carrier violated the Agreement, particularly Rule 17, when it failed to call and assign the Claimant to overtime inspection work on February 23, 2015. The Organization contends that Rule 17, § 1(a) provides that when work is to be performed, the senior employee in the required job class will be given preference for overtime work ordinarily and customarily performed. The Organization contends that it has sufficiently rebutted the Carrier's contention that it attempted to call the Claimant, but he did not answer. The Organization contends that the Carrier should have produced phone records to demonstrate that it attempted to contact the Claimant.

The Carrier contends that on February 23, 2015, calls were made, in seniority order, to bid-in Track Inspectors for track inspection work. The Carrier contends that the Claimant was called for this overtime, but he did not answer and did not return the call. The Carrier contends that after the call-out list was exhausted, it had the right to call other employees within the seniority district and Employee Strickler was properly assigned to perform the work.

The Carrier contends that the Organization has failed to prove by probative evidence that the Carrier violated the Agreement. The Carrier contends that the Roadmaster's statement that he attempted to call the Claimant has not been rebutted with credible evidence. The Carrier contends that in situations where cross contentions are gridlocked, the claim must be dismissed for failure to establish a prima facie case.

**“Rule 17 § 1 of the parties’ Agreement provides:**

**Section 1- Non-mobile gangs:**

- (a) When work is to be performed outside the normal tour of duty in continuation of the day’s work, the senior employee in the required job class will be given preference for overtime work ordinarily and customarily performed by them. When work is to be performed outside the normal tour of duty that is not a continuation of the day's work, the senior employee in the required job class will be given preference for overtime work ordinarily and customarily performed by them.**
- (b) If additional employees are needed to assist in the work, other employees located within the seniority district will be offered/called in the order of their seniority, in the required job class.”**

**There is no dispute here that the work occurred, and that the Claimant is more senior than the employee who performed the work. The Roadmaster submitted a statement that the Claimant was contacted on his home phone and there was no answer. The Claimant denied that any phone call was made to his home phone. Neither the Organization nor the Carrier submitted any records to disprove the other’s statement.**

**Consequently, the Board is left with a record that contains an irreconcilable conflict of material fact. As an appellate forum, this Board is not able to reconcile the inconsistent statements. In such a case, the party with the burden of proof must be found to have failed to establish a prima facie case. The Board finds that the Organization failed to prove that the violation occurred; the claim must be dismissed.**

**AWARD**

**Claim dismissed.**

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**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 18th day of June 2020.**