

NATIONAL MEDIATION BOARD  
WASHINGTON, DC

PUBLIC LAW BOARD NO. 7163

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
DIVISION – IBT RAIL CONFERENCE

AND

CSX TRANSPORTATION, INC.

Docket No. 107  
Employee: A. Harris

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Neutral Member: Barbara Zausner  
Carrier Member: Robert A. Paszta  
Organization Member: Timothy W. Kreke

STATEMENT OF CLAIM

- 1- The Carrier violated the Agreement when it failed to call and assign Mr. K. Harris to perform the overtime duties of following a switch rail grinding machine to put out fires between the Control Point 167 at Mile Post QD 166.8 and Berea, Ohio Mile Post QDS23.3 on the Erie West Subdivision on April 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30 and May 1, 2008 and instead called and assigned junior employee W. Misorski. (System File HARRISA 108/2008-027585)
- 2- As a consequence of the violation referenced in Part (1) above, Claimant K. Harris shall now be compensated for one hundred eighty-nine and one-half (189.5) hours at his respective time and one-half rate of pay.

## FINDINGS

Upon the whole record and on the evidence, the Board finds that the parties herein are Carrier and Employer within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The Organization contends that the Claimant was not offered the duty on overtime of following behind rail grinding trains in a hy-rail vehicle in order to put out fires that may occur. The employee who did that work was junior to the Claimant. The Claimant was readily available and fully qualified to perform the work. The Claimant's statement of September 17, 2008 is offered as evidence that he was not "asked to work any position concerning rail grinder" on the dates at issue.

According to the Organization, the Carrier's defense that it offered the disputed overtime work assignment to the Claimant and that the Claimant refused to accept the assignment is without merit. The statement offered by the Carrier is an unsigned email document which other Boards have found to be "insufficient direct evidence to overcome the Organization's prima facie case."

The Organization also disputes the Carrier's claim that the remedy sought for the Claimant is excessive. The parties can be directed to search the records to determine the exact remedy owed.

The Carrier asserts that the only issue in this case is "whether the employee was offered the work at issue." It maintains the Claimant was given the right of first refusal. It offers the Claimant's supervisor's statement that he offered the Claimant the work and he refused it. The Carrier also points to records that show that the Claimant worked 69.75 hours of overtime during the period in question. If he is entitled to any remedy it should be limited to 119.75 hours.

As Referee Wallin pointed out in a similar case on this property, we "are confronted with a conflict of material fact that was not resolved in the on-property record: Did the Claimant decline, or did he not decline, the overtime opportunity." We must agree with that Board's conclusion: given "such irreconcilable conflicts of material fact, we have no choice but to declare that the Organization's burden of proof has not been satisfied." (NRAB Third Division Award 39026).

AWARD

Claim denied.

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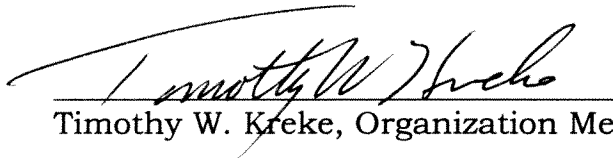
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Barbara Zausner, Neutral Board Member  
January 11, 2012

A handwritten signature in cursive script, reading "Robert A. Paszta".

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For the Carrier  
Robert A. Paszta, Carrier Member

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Timothy W. Kreke, Organization Member