

Public Law Board 7163

Award No. 15

Parties to the Dispute:

Brotherhood of Maintenance of Way Employees Division

IBT Rail Conference

and

CSX Transportation, Inc.

(K. Holsopple. – Claimant)

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier upgraded and assigned Welder Helper D. Heinbaugh to a production foreman position beginning on September 16 and continuing “through September 30, 2003, instead of Foreman K. Holsopple [System File A04817603/12(04-0276) CSX].
- (2) As a consequence of the violation referred to in Part (1) above, Claimant K. Holsopple shall now be compensated for ninety (90) hours at the applicable straight time rate and seventy-one (71) hours at the applicable time and one-half rate of pay.”

Findings:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934. Public Law Board 7163 has jurisdiction over the parties and the dispute involved herein.

At the time of the incident giving rise to the instant claim, Claimant had established and held seniority as a Track Foreman on the Pittsburgh East Seniority District.

The Organization argues that the Carrier violated the Agreement when it used Welder Helper Heinbaugh to provide track authority for System Production Gangs R2, C4 and C5 in the Pittsburgh East Seniority District. Heinbaugh is assigned to SLWT 6DEC which is a floating Rail Support force and does not have seniority as a Foreman on the Pittsburgh East Seniority District. Providing track authority is work ordinarily and customarily performed by Track Foreman on the respective seniority district of advertised for bid within the home seniority

district. Claimant was a Foreman on the Pittsburgh East Seniority District and should have been assigned the work of providing track authority. The Carrier violated Rule 17 and Rule 38 when it assigned work to an employee that neither holds seniority on the Pittsburgh East Seniority District nor is a Foreman.

The Carrier responds that the Agreement was not violated because track protection is an assignment that is not exclusive to Track Foremen. The Carrier has paid him at the Foreman rate, but that does not establish that the assignment is exclusive to a Track Foreman. Heinbaugh is a Production Foreman on a mobile production gang. He provided track protection during the normal hours of the mobile gang and also during work outside the normal hours. In support, the Carrier cites PLB 6564 Award 18, involving the instant parties, for the proposition that track protection is not reserved to any particular class or position.

After a review of the record, and the Award citations contained therein, the Board finds that the Organization's position is not persuasive. Carrier's citation to PLB 6564 Award 18 supports the conclusion that past practice, custom and the Agreement do not reserve providing track authority to any position in the following:

What this case is about is the Organization's contention that when track protection is needed, the Carrier must assign the work to a foreman at the foreman's rate of pay. The Organization has failed to sustain its burden with respect to his central issue, largely because it has been unable to cite any past practice or provision of the system-wide Agreement of 1999 that preserves flagging work to the foreman position Pittsburgh East Seniority District

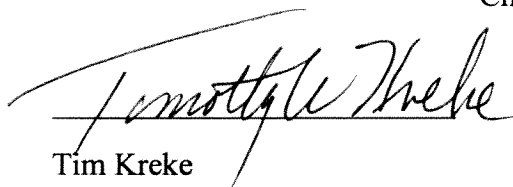
The Organization has not established that the work was reserved to a Foreman. Further, the Organization has not established that Rule 17 was violated when the assignment was done by a mobile production gang employee working in Claimant's seniority district. Claimant was not a mobile employee, rather he was assigned to the Pittsburgh East Seniority District. The Agreement was also not violated when Claimant was not assigned the overtime work. Rule 17 Section 2 provides that "When the work is of a specialized nature . . . the gang ordinarily doing this type of work during the regularly assigned work period would be given preference for the continuation of this work outside of the regularly assigned work period with the employees in the gang being called in the order of their seniority." The Organization has not shown a violation of the Agreement when Heinbaugh provided track protection. It has also not shown a violation of the Agreement when he continued to provide track protection for the mobile gang as overtime.

Award:

Claim denied.

Brian Clauss

Brian Clauss
Chairman and Neutral Member



Tim Kreke
BMW

Organization Member



Robert A. Paszta
CSX Transportation, Inc.

Carrier Member

Dated this 26th day of January 2012