

NATIONAL MEDIATION BOARD
WASHINGTON, DC

PUBLIC LAW BOARD NO. 7163

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE

AND

CSX TRANSPORTATION, INC.

Docket No. 48
Employee: D. Tropea

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

STATEMENT OF CLAIM

- 1- The Agreement was violated when the Carrier failed to call and assign Three Rivers West Seniority District employee D. Tropea to perform overtime service on Three Rivers West Seniority District Seniority territory at No. 2 Track at Mile Post BG 54.5 on October 12, 16, 17, 18, 19, 23, 24, 25, 26, 30, 31, November 21, 26, 27, 28, 29, and 30, 2006 and instead assigned Akron East Seniority District employee C. Pahls. (System File TROPEAC206/12(07-0249).
- 2- As a consequence of the violation referred to in Part (1) above, Claimant D. Tropea shall now be compensated for 100 .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 the Claimant should have been called to do the overtime work in question because he holds seniority on the Three Rivers West Seniority District and Mr. Pahls, who did the work, holds no seniority on the territory where this work took place. The Organization cites Rule 3, Section 1., Rule 4, Sections 1.(a) and 5, and Rule 17, Sections 1-(a) and (b). It also points to arbitration awards that interpret similar rules to mean that work is reserved by seniority districts.


The Organization also provided statements by three Rivers West Seniority District employees. The Claimant wrote that he regularly performs maintenance of way work in the area in question. Track Inspectors Geer and Melvin wrote that they regularly and routinely inspect track from Mile Posts BG 54.0 to BG 58.0 on No. 2 track. The Organization contends the map submitted by the Carrier should be given no weight as it is not clear or legible. Neither the map nor other documents accurately show where the subject overtime work took place. The Organization's map, on the other hand, shows that the work took place on the Three Rivers West Seniority District.

The Carrier claimed "employee Pahls was on duty and under pay as a bridge foreman during the claim dates and was performing the flagging work of protecting contractors who were reinforcing the bridge span. Flagging has not been 'customarily or traditionally performed' exclusively by BMW track employees...."

The dispute centers on where the work was performed. Carrier's Exhibits H & I cannot be considered as they were not presented during the on-property procedure. The fact that Three Rivers Seniority District employees routinely worked in the specific area at issue is not refuted by the Carrier. The Organization's map, unlike the Carrier's, is clear and legible. There is no evidence in the record that it is inaccurate. We conclude on this evidence that the Agreement was violated and the Claimant is entitled to compensation for 105.5 hours at his respective time and one-half rate of pay.

AWARD

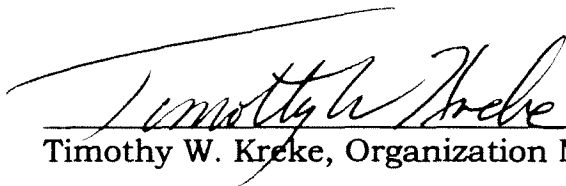
Claim sustained.

A handwritten signature in black ink that reads "Barbara Zausner". The signature is written in a cursive style with a large, looped initial 'B'.

Barbara Zausner, Neutral Board Member
January 11, 2012

A handwritten signature in black ink that appears to be "R. Paszta". The signature is written in a cursive style with a large, looped initial 'R'.

Robert A. Paszta, Carrier Member

A handwritten signature in black ink that reads "Timothy W. Kreke". The signature is written in a cursive style with a large, looped initial 'T'.

Timothy W. Kreke, Organization Member