

PUBLIC LAW BOARD NO. 7104

BROTHERHOOD OF)	
MAINTENANCE OF WAY EMPLOYEES)	
DIVISION – IBT RAIL CONFERENCE)	
)	CASE NO. 5
vs.)	AWARD NO. 5
)	
CSX TRANSPORTATION, INC.)	

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- 1. The Agreement was violated when the Carrier assigned Track Inspectors D. Rae and L. Russell to perform overtime service (repair cross level problems found by TGC 2 Car) on the Peninsula Subdivision on September 28, 2001, instead of Messrs. T. Wright and R. Goodman [System File G33317801/12(01-0733) CSX].**
- 2. As a consequence of the violation referred to in Part (1) above, Claimants T. Wright and R. Goodman shall now each be compensated for two (2) hours' pay at their respective time and one-half rates of pay.**

FINDINGS:

Public Law Board No. 7104, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

On October 5, 2001, the Organization filed the instant claim, contending that Claimants should have been assigned overtime to repair cross level problems on the Peninsula Subdivision on September 28, 2001, work which had been assigned to track inspectors. The Carrier denied the claim on November 27, 2001, disputing the amount of the claim, noting that Claimants were working overtime on the dates in question and denying that any agreement rules had been violated.

The Organization contends that the Carrier violated the parties' Agreement by assigning track inspectors, rather than Claimants, to perform overtime track repair and maintenance work. The Organization points out that Claimants were members of the

local section gang, who ordinarily and customarily performed the work on the trackage involved.

The Organization asserts that the relevant rules language requires a sustaining award. In particular, the Organization relies upon the following rules, which provide, in relevant part:

Rule 3—Selection of Positions

Section 4. Filling temporary vacancies

(a) A position or vacancy may be filled temporarily pending assignment. When new positions or vacancies occur, the senior qualified available employees will be given preference, whether working in a lower rated position or in the same grade or class pending advertisement and award.

Rule 17—Preference for Overtime Work

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.

Section 2- Mobile gangs:

When the work involved is of a specialized nature, such as production work, rail laying, tie installation, surface, etc., 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, in the required job class. If other employees are needed to assist in the work, other production gang employees within the seniority district will be offered/called in the order of their seniority, in the required job class.

The Organization contends that this case presents a simple, straightforward dispute, in that the Carrier assigned track inspectors to perform overtime track repair and

maintenance work instead of Claimants, members of the local section gang, who ordinarily and customarily perform such work. Simply put, the Organization states, the Carrier assigned the work to employees other than the regularly assigned section forces.

The Organization points to Section 1(a) of Rule 17, which provides that the senior employee in the required job class will be given preference for overtime work ordinarily and customarily performed by them. The Organization points out that Claimants were assigned to Section Force 5GA5 with headquarters in Richmond, Virginia, only 20 miles from the location of the disputed work. Messrs. Rae and Russell, the Organization states, were assigned as track inspectors in the Peninsula Subdivision, and their normal primary duties were to inspect track, not to be used as a section gang. Thus, the Organization concludes, they had no right preferential to that of Claimants to perform overtime track repair work, and its claim must prevail.

As for the monetary aspect of the Claim, the Organization states that the Carrier disputed the actual number of overtime hours, and the Organization requested that the Carrier support its position. It failed to do so, the Organization states, so the number of hours should stand. With respect to the Carrier's claim that Claimants were not available for the disputed work because they were working overtime elsewhere, the Organization states that ample precedent supports its position that Claimants were entitled to a monetary award notwithstanding that they were performing other work assigned them by the Carrier.

The Carrier first states that the Claimants were not available for the disputed work because their regular assignments continued into overtime service on the occasions at issue. Primarily, however, the Carrier contends that the Organization failed to establish that making adjustments in the rail is work which exclusively accrues to the Track Foreman and Vehicle Operator positions occupied by Claimants. All of the employees involved, the Carrier points out, maintain seniority rights on the Peninsula Subdivision and are covered by the Scope of the parties' agreement, but none of the employees have an exclusive right to the claimed work. Track adjustments, the Carrier states, can also be made by Inspectors, Assistant Inspectors, Foremen, Assistant Foremen, Mechanics, Carpenters, Machine Operators and Vehicle Operators, as all are responsible for maintaining the right of way. In addition, the Carrier notes, the Organization has failed to provide any evidence to establish that the disputed work accrues exclusively to Claimants by custom, practice or tradition on a system-wide basis. Therefore, the Carrier concludes, in reliance upon numerous awards, the Organization has failed to meet its burden of proof.

We have carefully reviewed the record in its entirety, and find that the record is insufficient to support the claim in this matter. While the Organization asserts that the local section gang ordinarily and customarily performed the disputed work, and the Carrier was therefore required to assign it to the Claimants instead of the track inspectors, the Organization has pointed to no contract language establishing that this work accrued exclusively to Claimants. Moreover, there is no evidence to support the contention that

the work accrued exclusively to Claimants by custom, practice or tradition. In these circumstances, as has been held in numerous awards, the claim must be denied.

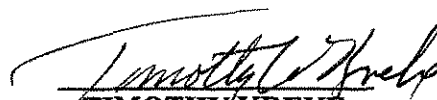
AWARD

Claim denied.


JACALYN L. ZIMMERMAN
Neutral Member


MATTHEW BORZILLERI
Carrier Member

Dated this 10th day of October, 2008.


TIMOTHY KREKF
Organization Member
Oct-10, 2008