

**PUBLIC LAW BOARD NO. 7163**

AWARD NO. 1

CASE NO. 1

Carrier File: 12 (02-0096)

BMWE File:01-214

PARTIES TO  
THE DISPUTE:

Brotherhood of Maintenance of Way Employees  
Division - IBT Rail Conference  
vs.  
CSX Transportation, Inc.

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained

STATEMENT OF CLAIM:

- “1. The Agreement was violated when the Carrier assigned Machine Operator G. K. Willis to fill foreman vacancies on B&B Gangs 6C89 and 6C90 on December 3, 4, 5, and 6, 2001 and continuing, instead of assigning furloughed B&B Foreman T. D. Ayers [System File02-214/12(02-0096) CSX].
2. As a consequence of the violation referred to in Part (1) above, Claimant T. D. Ayers shall now be compensated for forty (40) hours at the respective foreman's straight time rate of pay for the dates of December 3, 4, 5 and 6, 2001 and he shall be paid at the applicable foreman's rate of pay for all hours worked by G. K. Willis in the aforesaid foreman vacancies from December 7, 2001 and continuing.”

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The claim filed on December 10, 2001 asserted that the Carrier was allowing a machine operator to perform the duties of a B&B Foreman during the absence of the assigned foreman in violation of Rules 1, 2, 3, and 4 while claimant remained in furlough status. The claim specified the claim dates. It also specified the location by mile post limits where the work had been performed. Rule 1 establishes seniority classes and describes the work of each: Foremen and machine operators are separate classes. Rule 4 provides for filling temporary vacancies.

Other than contending the claim lacked sufficient information, the Carrier did not refute any of the factual assertions of the claim. Nor did the Carrier explain what information it believed was lacking. In the Organization's appeal, it provided the name of the machine operator who performed the B&B Foreman work and it also provided the numbers of the gangs where the temporary vacancies occurred. In its final correspondence on the property, the Carrier again did not refute any

of the factual assertions made by the Organization.

Although the Carrier did advance a number of contentions and new evidence in its submission to this Board, it is well settled that such new material may not be considered by us because it was not made a part of the record developed by the parties during their handling of the claim on the property.

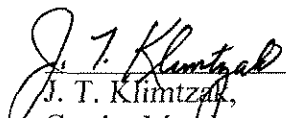
Given the foregoing state of the record, we must sustain the claim as presented.

AWARD:

The Claim is sustained and must be implemented within thirty (30) days of the date of signing.

  
Gerald E. Wallin, Chairman  
and Neutral Member

  
R. C. Robinson,  
Organization Member

  
J. T. Klimtza,  
Carrier Member

Date: December 1, 2008