

PUBLIC LAW BOARD NO. 7163

AWARD NO. 4

CASE NO. 4

Carrier File: 12 (03-0391)

BMWE File: G31800803

PARTIES TO
THE DISPUTE:

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

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied.

STATEMENT OF CLAIM:

- “1. The Carrier violated the Agreement when failed to call and assign R. Paitsel for straight time and overtime service in connection with work performed at a derailment site between Mile Posts 155.2 and 158.2 on the Clifton Forge Seniority District on December 31, 2002, January 1, 2, and 3, 2003 and instead assigned junior employee W. Carter [System File G31800803/12(03-0391) CSX].
2. As a consequence of the violation referred to in Part (1) above, Claimant R. Paitsel shall now be compensated for forty (40) hours' pay at his respective straight time rate of pay and forth (40) hours at his time and one-half rate of pay.”

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.

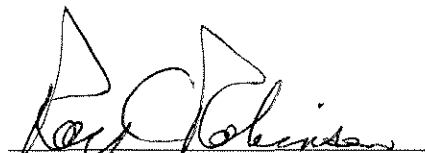
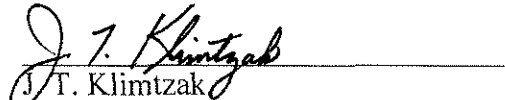
After careful review of the parties' submissions, it is clear that the evidentiary record consists of nothing more than assertions that were not supported by any actual evidence after they were effectively refuted by the Carrier. The record shows that a significant conflict of fact existed over whether a derailment occurred on December 31, 2002 as alleged in the initial claim. In addition, the Organization's May 26, 2003 appeal of the Carrier's denial, which refuted the existence of a derailment on December 31, 2002 as the claim alleged, is internally contradictory. On page one of the appeal letter, the Organization again asserted, "On December 31, 2002, a derailment had occurred ... [at the previously specified location]" On page two of the appeal letter, however, the Organization wrote, "The derailment had occurred prior to December 31, 2002." As previously noted, at no time did the Organization provide any evidence that a derailment occurred at the location at any time.

The record also establishes other disputes of material fact that were not resolved by the production of evidence. For example, a material issue of fact continued to exist over whether claimant was furloughed and available or working on a Florence Service Lane assignment out of the region.

The fact that the Organization failed to provide any probative evidence whatsoever to properly establish that a derailment occurred at any time or to resolve other factual conflicts leads, inescapably, to the finding that the record developed on the property does not establish key facts necessary to support the claim. Accordingly, we must find that the Organization has failed to satisfy its burden of proof. As a result, the claim must be denied.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member
R. C. Robinson,
Organization Member
J. T. Klimtzak
Carrier Member

Date: December 1, 2008