

PUBLIC LAW BOARD NO. 7163

AWARD NO. 6

CASE NO. 6

Carrier File: 12 (03-0407)

BMW File: G37601503

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 Track Inspectors D. Russell and J. Reams to overtime service (inspect tracks) between Mile Posts KC 12.0 and KC 98.1 on the CC Seniority District on January 18, 23, 24, 25 and 27, 2003 and instead called and assigned Section Foreman K. McCarty and Trackman J. Baughn [System File G37601503/12(03-0407) CSX].
2. As a consequence of the violation referred to in Part (1) above, Claimants D. Russell and J. Reams shall now each be compensated for forty-three (43) hours at their respective time and one-half rates 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.

The focus of the instant dispute is the proper distribution of cold weather track inspection work assignments when they are performed on an overtime basis. The basis facts are not in controversy. Very cold weather descended upon the track corridor in question during the claim dates. The track foreman and trackman named in the Statement of Claim performed cold weather inspection of the track corridor to verify its integrity for safe passage of trains.

The claim alleges that Rules 1 and 17 were violated. Rule 1 defines the various seniority classes recognized by the parties' Agreement and describes their primary duties. Rule 17 dictates who shall be given preference for overtime work opportunities.

The previous two paragraphs explain where the facts established by the record stop and the arguments begin. Because the disputed work is clearly a form of track inspection, the Organization and claimants contend it is regularly their work. As a result, they were entitled to the overtime opportunity pursuant to Rule 17. The Carrier, to the contrary, maintains that cold weather track

inspection is a form of inspection work that is not reserved to the Track Inspector classification; as such, it can properly be assigned as it was.

Rule 1 describes the primary duties of the Trackman classification. It reads, in pertinent part, as follows:

3. Trackman
Construct, maintain, repair, inspect and dismantle track and appurtenances thereto.

(Underscoring supplied)

It is clear from even a cursory review of Rule 1 that some kind of track inspection work is properly a primary duty within the jurisdiction of classifications other than that of Track Inspector. Stated differently, contrary to the Organization's position, it is obvious that not all forms of track inspection work are reserved to the Track Inspector classification.

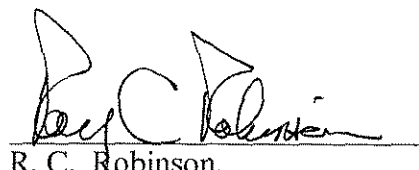
The burden of proof to establish that cold weather track inspection is one of the kinds of track inspection that is reserved to the Track Inspector classification was solely shouldered by the Organization and claimants. On the record before us, that burden has not been satisfied. Indeed, a February 10, 2000 letter authored by the Organization's then Vice Chairman strongly suggests that cold weather track inspection is not reserved to the Track Inspector classification. The letter said, "... because this type activity is not a matter of track inspection, the proper employees to assign are the Section gang members." The letter was in response to a specific question about which classifications should be assigned the overtime for such work: Track Inspectors or the Section gang.

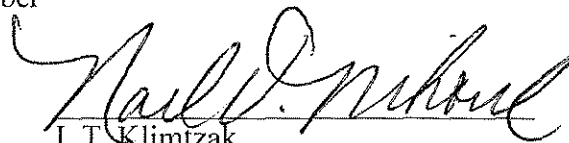
On the record before us, we must find that a violation of the Agreement has not been proven.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


R. C. Robinson,
Organization Member


J. T. Klimtzak,
Carrier Member

Date: Dec. 12, 2008