

PUBLIC LAW BOARD NO. 7163

AWARD NO. 8

CASE NO. 8

Carrier Files: 12 (03-0853) and 12(03-0854)

BMWED Files: I50721803 and I50721903

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 it assigned junior employee M. West to work a flagging position on the Midwest North in the vicinity of Florence, Kentucky beginning July 7, 2003 and continuing, instead of Mr. J. Dennis [System Files I50721803/12(03-0853) and I50721903/12(03-0854) CSX].
2. As a consequence of the violation referred to in Part (1) above, Claimant J. Dennis shall now be compensated for the difference in pay, both straight time and overtime, between what he earned and the straight time and overtime pay earned by Mr. M. West in the performance of the aforesaid flagging duties beginning July 7, 2003 and continuing until such duties ceased.”

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 basic facts are not in controversy. The Carrier assigned an employee to perform flagging work to ensure the safety of contractor and Carrier forces working on a project on the LCL Subdivision near Florence, Kentucky. The employee assigned was junior to claimant in terms of B&B Mechanic seniority. Although they held the same type of position, they worked on different gangs. While performing flagging duties, the junior employee received a foreman's rate of pay and also accrued several overtime hours at that rate.

The instant dispute combines two separate claims that are virtually word-for-word identical except for the claim dates listed. The first claim is for 14 working days in July of 2003. The second is for 17 more dates in July and August.

Both claims cite Rules 4 and 11 as having been violated. The Organization maintains that the assignment should have been offered to the claimant on the basis of his greater B&B Mechanic

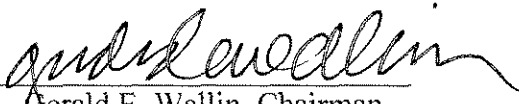
seniority. The Carrier contends that flagging duties can be performed by any classification within the BMWED craft and does not involve seniority issues.


In its submission, the Organization relied heavily on Rule 3 and advanced arguments based on that rule. However, Rule 3 was never part of the claim in any respect while it was handled on the property. Instead, both claims cited only Rules 4 and 11. Rule 4 merely describes how seniority dates are established and contains nothing else of relevance to the claims. It does not, for example, provide for any related rights based on seniority or explain how they are to be exercised. Perhaps other rules do, but Rule 4 does not. Similarly, while Rule 11 describes how overtime hours are to be computed, it says nothing about distribution of overtime opportunities based on seniority. As a result, neither Rule 4 nor Rule 11 provides support for the Organization's contentions.

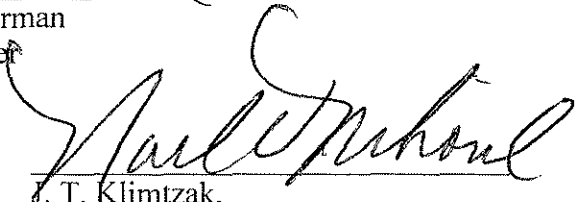
Given the state of the record herein, we must that no violations of Rules 4 or 11 have been proven. Accordingly, the claims must be denied.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


R. C. Robinson,
Organization Member


J. T. Klimtzak,
Carrier Member

Date: Dec. 12, 2008