

Public Law Board 7163

Award No. 12

Parties to the Dispute:

Brotherhood of Maintenance of Way Employees Division

IBT Rail Conference

and

CSX Transportation, Inc.

(M. Spikes, Sr. – Claimant)

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to call and assign Vehicle Operator M. Spikes, Sr. to perform overtime service (operate a six-man pickup truck) on September 22, 23, 24, 2003 and instead called an assigned Track foreman D. Rae. [System file G33818103 9 (04-0238 CSX)]
- “(2) As a consequence of the violation referred to in Part (1) above, Claimant M. Spikes, Sr. shall now be compensated a total of 24 hours at the appropriate time and one half rate of pay and 11 hours at the double time rate of pay for the violations that occurred on September 22, 23 and 24, 2003.

Findings:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934. Public Law Board 7163 has jurisdiction over the parties and the dispute involved herein.

At the time of the incident giving rise to the instant claim, Claimant had established and held seniority as a Vehicle Operator in the Track Department. He was typically assigned as a boom operator on Gang 5GB1.

The Organization argues that the Carrier violated the Agreement when it called and assigned Track Foreman Rae to operate a six-man pickup in order to fuel generators and provide track protection. Claimant was available and was the senior vehicle operator and was also


qualified to provide track protection. Overtime service operating vehicles such as six-man trucks has been customarily performed by vehicle operators.

The Carrier counters that the Claim should be dismissed because Foreman Rae was not driving the truck in connection with any scope-covered work. The Foreman was not transporting employees, rather, he was using the truck to perform track protection for the employees who were refueling the generators. The Carrier can assign track protection to the Foreman. Driving the truck for track protection is secondary to the track protection and therefore does not violate the Agreement. Further, even if the Organization's position is correct, there was an emergency situation in the aftermath of Hurricane Isabella and the Carrier is allowed substantial leeway during emergency assignments.

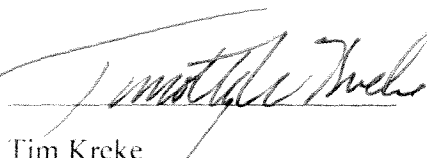
After a review of the record, and the Award citations contained therein, the Board finds that the Organization's position is not persuasive. Even disregarding the Carrier's argument that there was an emergency situation, the Claim still cannot be sustained. It is established in the record that the Foreman was performing track protection and drove the truck as part of that work. Driving the truck was a secondary task for the Foreman as he performed the track protection. The performance of the protection by the Foreman was permissible.

Award:

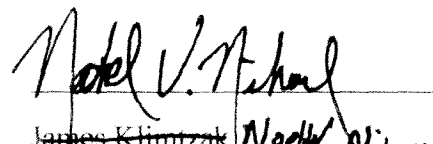
Claim denied.



Brian Clauss
Chairman and Neutral Member



Tim Kreke
BMW
Organization Member



James Klimtzak Noel V. Michael
CSX Transportation, Inc.
Carrier Member

Dated this 2nd day of August 2010