

AWARD NO. 129  
Case No. 129

Organization File No. 160758610  
Carrier File No. 2010-079732

**PUBLIC LAW BOARD NO. 7163**

PARTIES     ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,  
              ) INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
TO            )  
              )  
DISPUTE     ) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier failed to call and assign Mr. J. Finch to operate a backhoe to repair a broken rail at Mile Post 000356.4 near Bangor, Alabama on September 28, 2009 and instead assigned junior employee S. Johnson
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Finch shall receive three and one-half (3.5) hours of pay at his respective time and one-half rate of pay.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On September 28, 2009 Claimant was regularly assigned as an "A" Machine Operator on the Nashville Division. On that day, the Carrier required an "A" Machine Operator to operate a backhoe to assist in work on a broken rail at Mile Post 000356.4 on the Nashville Division. The Carrier used S. L. Johnson to perform this work at the overtime rate. While the Organization states Johnson was

compensated for three and one-half hours, the Carrier avers he received only three hours' compensation at the overtime rate. Johnson also holds seniority as an "A" Machine Operator, although he is junior to Claimant.

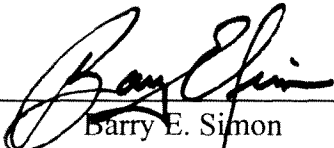
The Organization asserts Claimant had informed his supervisors that he was available for all overtime work and should have been called for this service. It further contends Johnson had been regularly assigned as a Vehicle Operator at the time. The Organization argues that Claimant should have been used for this service because 1) he is senior to Johnson, and 2) he was working as a Machine Operator while Johnson was working as a Vehicle Operator.

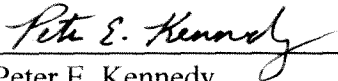
A review of Johnson's payroll records shows that he was compensated for three hours at the overtime rate on September 28, 2009. The records further show that while he was a Vehicle Operator on September 26, he worked as a Machine Operator on September 27, 28, 29 and 30. We are unable to conclude from this record that Johnson was regularly assigned as a Vehicle Operator. In fact, the payroll record shows that he worked in several capacities during the month of September, including as a Basic Track Foreman. In the absence of the Organization proving otherwise, we conclude that we may determine Johnson's status by the work he was performing on the date of claim. Inasmuch as Johnson was working as a Machine Operator at the time, we hold that the Organization's argument with respect to job status is without merit. The Organization's claim has merit, therefore, only if Claimant's seniority relative to Johnson's automatically entitled him to the work.


It is apparent from the record in this case that the broken rail occurred on the territory on which Johnson's gang was assigned. This was not work within Claimant's territory. Under Rule 17,

Section 1(a), such overtime work is given to the senior employee who would ordinarily and customarily perform it. In this case, that would give a preference to the employees working in the gang on the territory on which the work was performed, notwithstanding the fact that Claimant had greater seniority. We cannot find that the Agreement was violated by the Carrier's failure to call Claimant for the work.

AWARD: Claim denied.

  
Barry E. Simon  
Chairman and Neutral Member

  
Peter E. Kennedy  
Employee Member

  
Robert Paszta  
Carrier Member

Dated: January 7, 2013  
Arlington Heights, Illinois