

AWARD NO. 25

Case No. 25

Organization File No. B11726905

Carrier File No. 12 (05-1194)

**PUBLIC LAW BOARD NO. 7163**

PARTIES     ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
              )  
TO            )  
              )  
DISPUTE     ) CSX TRANSPORTATION COMPANY

STATEMENT OF CLAIM:

(1)     The Agreement was violated when the Carrier failed and refused to bulletin a vehicle operator position on Gang 6M65 (fuel truck surfacing gang) on the M&NO Division of the Southern Region.

(2)     As a consequence of the violation referred to in Part (1) above, Claimant E. Holder shall now be paid at the respective and applicable vehicle operator rate for all straight time and overtime hours worked by Gang 6M65 beginning sixty (60) days retroactive from August 18, 2005 and continuing forward until the vehicle operator position on Gang 6M65 is advertised and the violation stops.

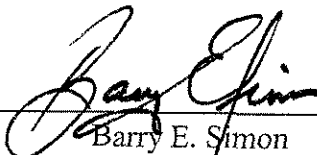
FINDINGS:


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.


The Organization asserts the Carrier used the foreman of Gang 6M65 to operate a six-man vehicle on a daily basis rather than bulletin a vacancy. Accordingly, it asked that Claimant be compensated as if he had been assigned the job by bulletin.

The Carrier has denied the claim, asserting there is no factual basis for it. We have reviewed the record before the Board and find that the Organization has not met its burden of proof to establish that this work was, in fact, performed on a regular basis by the foreman. The mere assertion of a violation of the Agreement, absent any evidence, is not sufficient for us to sustain the claim.

AWARD: Claim denied.

  
Barry E. Simon  
Chairman and Neutral Member

  
Roy C. Robinson  
Employee Member

  
James F. Klimtzak  
Carrier Member

Dated: December 30, 2008  
Arlington Heights, Illinois