

AWARD NO. 28

Case No. 28

Organization File No. G31856405

Carrier File No. 12 (06-0318)

**PUBLIC LAW BOARD NO. 7163**

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

STATEMENT OF CLAIM:

(1) The Agreement was violated when the Carrier failed to call and assign SLWT Surfacing Force 5G96 Foreman M. Linkswiler and Machine Operators G. Broughman and T. Rittenhouse to perform track surfacing work (operating surfacing force machinery) on the James River Subdivision between Mile Posts CAB 180.0 and CAB 184.0 on November 11, 2005 and instead called Welder T. Sexton, Vehicle Operator T. Brown and Machine Operator P. Williams to perform said track surfacing work.

(2) As a consequence of the violation referred to in Part (1) above, Claimants M. Linkswiler, G. Broughman and T. Rittenhouse shall now each be compensated for ten (10) hours at their respective time and one-half rates 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.

Claimants were employed on a surfacing gang with a Monday through Thursday work week. On Friday, November 11, 2005, according to the Organization, the Carrier utilized Welder T. Sexton, Vehicle Operator T. Brown and Machine Operator P. Williams to perform work on the surfacing

gang that would have been performed by Claimants on their regular work days. The Organization asserts Claimants should have been called by the Carrier to perform this service at the overtime rate. The Carrier denies the employees performed Claimants' work.

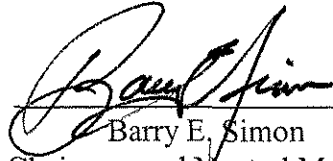
In this case, the Organization has the burden of proof. In support of its claim, it has offered a statement from Machine Operator Williams, dated March 12, 2006, reading as follows:


This letter is to confirm the information to be true in the above file. I actually ran the lights on the 6700, which is normally the duties of the foreman, on November 11, 2005. I am a burro operator on Force No. 6GGD. I do not hold foreman's seniority but agreed to perform their work when asked by Roadmaster D. R. Hale. T. C. Brown, I.D. #619129 and T. R. Sexton, I.D. #623312 did indeed run ballast regulators on this date. We surfaced track between mile post CAB 180.0 and 184.0 on the James River Subdivision.

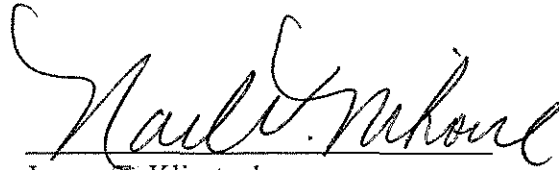
The Carrier responded by presenting a document purporting to show that Williams "worked on the date in question getting track authority for Eagle Rock at milepost CAB 213.5, a location over 25 miles from where he allegedly worked on a surfacing team." As noted by the Organization, though, this document indicates Williams was at Eagle Rock for only 58 minutes of his ten hour work day. The Organization explains this is where Williams started his day on his regular assignment before Roadmaster Hale directed him to work where Claimants had been surfacing track. The Carrier has offered nothing to show where the other two employees worked that day.

Based upon the record before us, the Board concludes there is sufficient evidence to support the conclusion that the employees performed Claimants' work. We find that Claimants should have been called to perform this work on their rest days, and the Carrier's failure to do so was in violation of the Agreement. Claimants are entitled to the compensation they would have received had they performed this service.

AWARD: Claim sustained. Carrier is directed to comply with this Award within 45 days.

  
Barry E. Simon  
Chairman and Neutral Member

  
Roy C. Robinson  
Employee Member

  
James T. Klimtzak  
Carrier Member

Dated: December 30, 2008  
Arlington Heights, Illinois