

AWARD NO. 29
Case No. 29

Organization File No. I58703906
Carrier File No. 12 (06-0615)

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 B&B employee J. Kail to overtime service (remove drift off a bridge) at Mile Post 17.4 at Pegram, Tennessee on April 13, 2006 and instead called and assigned junior employee R. Toombs.

(2) As a consequence of the violation referred to in Part (1) above, Claimant J. Kail shall now be compensated for ten (10) hours at his respective time and one-half rate of pay.

FINDINGS:

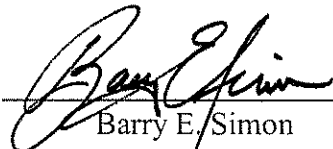
The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved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

On the date of claim, Claimant was regularly assigned to a B&B mechanic position on the Nashville Division of the Midwest Region. After regular work hours, the Carrier required the services of a B&B mechanic to remove drift (*i.e.*, tree branches, etc.) from a bridge at Pegram, Tennessee. The Carrier called R. L. Toombs, who is junior to Claimant, to perform this work on an

overtime basis for ten hours. The Organization maintains Claimant was available to perform this work and should have been called in lieu of a junior employee. It asks, therefore, that Claimant be compensated as if he had performed the work.

The Carrier asserts Claimant was not called because he had told Manager of Bridges Jimmy Hood that he did not want to be on the call out list. The Carrier has offered no documentation of this request, other than an email from Mr. Hood. The Organization was not obligated to prove that Claimant was willing to accept the work. Unless proven otherwise, the Agreement creates the presumption he was. The Board finds that the Organization has met its burden of proof in establishing that Claimant should have been called to perform this work on the basis of his seniority. By not doing so, the Carrier has violated the Agreement.

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