

PUBLIC LAW BOARD NO. 7163

AWARD NO. 34

CASE NO. 34

Carrier File: 12(06-0330)

BMWE File: D21702506

**PARTIES TO
THE DISPUTE:**

Brotherhood of Maintenance of Way Employees
Division - IBT Rail Conference

vs.

CSX Transportation, Inc.

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied.

STATEMENT OF CLAIM:

- “1. The Carrier violated the Agreement when it failed to call and assign Gang 5XT1 members N. Harris, J. McMeans, J. Floyd, S. Tudor, K. Gantt, J. Lee, K. Gant and R. Tankersley for overtime work installing ties at road crossings between Mile Posts 00K648.0 and 00K675.0 near Milton, Florida on March 3 and 4, 2006 and instead called and assigned members of Gang 5XT4 [System File D21702506/12(06-0330) CSX].
2. As a consequence of the violation referred to in Part (1) above, Claimants N. Harris, J. McMeans, J. Floyd, S. Tudor, K. Gantt, J. Lee, K. Gant and R. Tankersley shall now each be compensated for twenty-two (22) hours at their respective time and one-half rates of pay.”

FINDINGS OF THE BOARD:


The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.


The instant dispute is a claim by members of one System Production Gang 5XT1 for the overtime worked by a different System Production Gang 5XT4. The Carrier's unrefuted assertion established that both gangs were working in the same geographical area in the same time frame.


After careful review of the record herein, we must find that the Organization has not satisfied its burden of proof to establish the requisite elements of the claim. The record does not establish that Rules 11 or 17 have application to System Production Gangs in this kind of a dispute. Moreover, the record does not establish that Section 7 (Overtime) of Appendix “S” applies as the Organization contends. On the record before us, therefore, we must find that the Organization has not proven that the Agreement was violated as alleged in the claim. Accordingly, the claim must be denied.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


R. C. Robinson,
Organization Member


N. V. Nihoul,
Carrier Member

Date: Feb. 11, 2009