

PUBLIC LAW BOARD NO. 7163

AWARD NO. 38

CASE NO. 38

Carrier File: 12(07-0066)

BMW File: I55900706

**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 assigned overtime (operate dump truck) to Mr. T. Overton on November 11, 2006, instead of regularly assigned Vehicle Operator J. Miller [System File I55900706/12(07-0066) CSX].
2. The claim* as presented by General Chairman R. Brassell on November 16, 2006 to Mr. R. G. Mellish shall be allowed as presented because said claim was not disallowed in accordance with Rule 24(a).
3. As a consequence of the violation referred to in Parts (1) and /or (2) above, Claimant J. Miller shall now be compensated for sixteen (16) hours at his overtime rate of pay.

*The initial letter of claim will be reproduced within our initial submission."

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.

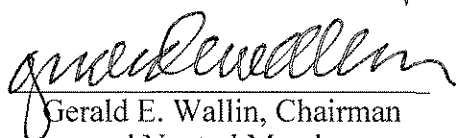
The instant dispute is another intra-craft jurisdiction dispute virtually identical to the fact pattern in Case 37 before this Board except for the number of hours involved and the claim date. Careful review of the record shows it to present no significant differences from the fact pattern analyzed in Case 37/Award 37. Indeed, the Organization's submission in this dispute also fails to include the Carrier's December 9, 2007 letter that provided a road map and explained the minimal amount of time Mr. Overton spent driving the truck to transport his assigned backhoe between Louisville and La Grange, Kentucky. In Case 37, the Organization failed to include a similar letter

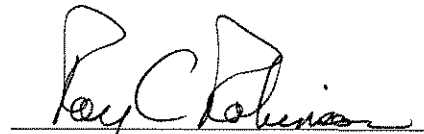
dated December 10, 2007.

For the reasons stated in our Award 37 pertaining to Case 37, both the procedural and merits issues raised by the Organization in the instant claim are rejected. The net result is that, once again, the Organization has failed to satisfy its burden of proof to establish the alleged violation of the Agreement. Accordingly, the instant 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