

AWARD NO. 59
Case No. 59

Organization File No. BattiC.018
Carrier File No. 2008-014887

PUBLIC LAW BOARD NO. 7163

PARTIES) BROtherHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,
) INTERNATIONAL BROTHERHOOD OF TEAMSTERS
TO)
)
DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. The agreement was violated when the Carrier failed to assign Claimant D. Battista to perform overtime service at the Frontier Yard, Buffalo, New York on February 23, 2008 and instead assigned junior employe E. Scibilia.
2. As a consequence of the violation outlined in Part 1 above, Claimant D. Battista shall be allowed nine (9) 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 Saturday, February 23, 2008, it was necessary to call an employee to perform overtime welder work at the Carrier's Frontier Yard in Buffalo, New York. Machine Operator E. A. Scibilia was called for this work and accepted it. It is undisputed that Scibilia is junior in welder seniority to Claimant, who contends he should have been called for the work on the basis of his seniority.

The Carrier asserts it called Claimant on his cell phone two times, but received no answer. It argues that it was then privileged to go on to the next employee on the seniority roster. In response, the Organization maintains Claimant had informed his Roadmaster that he wanted to be called on his home phone. While Claimant also has his cell phone number on file with the Roadmaster, the Organization says he had given instructions that the cell phone number was to be used to contact him only during regular work hours.

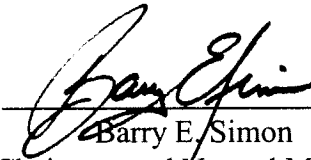
The Roadmaster has provided the following statement:

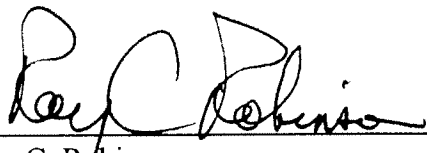
Having spoke with Mr. Battista in the past, he has referenced his preference of being called at home on the weekends. I have called Mr. Battista several times on his cellular phone to report to work for overtime, and has answered and come in. I do not keep a record of who wants to be called where when they are off of work. I call people out as the seniority list dictates on phone numbers that the men provide me.

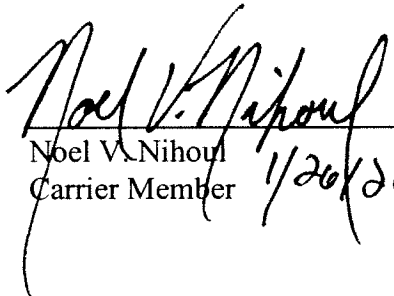
There is no question that Claimant had a right to be called for this work before the junior employee. Based upon the above statement, the Board is satisfied that he had given instructions to the Roadmaster as to how he was to be contacted on weekends. Those instructions were ignored in this case, causing Claimant to miss a work opportunity. The Roadmaster either should have taken note of Claimant's preference for being called at home or should have called both numbers before going on to the junior employee. The Carrier has agreed to call employees for such work in seniority order. The employees have an obligation to inform the Carrier as to how they wish to be contacted and they then have an obligation to be accessible at that phone number if they wish to be offered overtime work. The Carrier then has the obligation to call the employees at the correct number. When it does and the employee does not answer, the employee is considered to have forfeited the right to work. When the Carrier calls the wrong number, it must also accept the consequences.

We find that the Agreement was violated and Claimant should be compensated for what he would have earned had he been properly called for the overtime work.

AWARD: Claim sustained. Carrier is directed to comply with this Award within 30 days.


Barry E. Simon
Chairman and Neutral Member


Roy C. Robinson
Employee Member


Noel V. Nihoul
Carrier Member 1/26/2010

Dated: December 17, 2009
Arlington Heights, Illinois