

PUBLIC LAW BOARD NO. 7163

AWARD NO. 67

CASE NO. 67

**PARTIES TO
THE DISPUTE:** Brotherhood of Maintenance of Way Employees
Division - IBT Rail Conference

vs.

CSX Transportation, Inc.

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier failed to assign Claimant W. Gaither to perform overtime service performing track foreman duties on June 8, 2008 and instead assigned junior employee R. Booth (System File A02829008/2008-027364).
2. As a consequence of the violation in Part 1 above, Claimant W. Gaither shall be allowed twelve (12) hours at his respective time and one-half rate 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 arose in connection with track repair work after a derailment occurred on the Carrier's main line on June 7, 2008. It is undisputed that claimant was senior to Mr. Booth, and was in the proper class for the disputed work.

In its initial denial of the claim, the Carrier maintained that claimant was not available. In its later correspondence, the Carrier moved away from that position to one of claiming emergency circumstances permitted it to assign the work as it did.

According to the Carrier's position, "... all available forces in the surrounding area were


utilized ..." However, the record contains a statement from claimant showing that he was available to participate in the derailment repair work. In light of the claimant's statement, it was incumbent upon the Carrier to provide evidence to show that claimant was contacted but did not answer or was otherwise unavailable. The record is devoid of any actual evidence to show that Carrier made an effort to contact claimant.

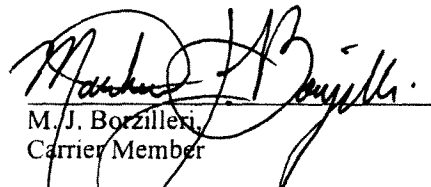
While it is true that the awards of dispute resolution boards do recognize allowances for dealing with emergencies, they do not condone outright lack of efforts to honor the seniority provisions of the Agreement. Even in emergencies, Carrier's are expected to try to comply with applicable Agreement requirements. The record before us establishes that the Carrier did not attempt to contact claimant as it should have.

AWARD:

The Claim is sustained.


Gerald E. Wallin, Esq., Chairman


Kevin Evanski,
Organization Member


M. J. Borzilleri,
Carrier Member

Date: 1-11-11