

AWARD NO. 77  
Case No. 77

Organization File No. G33833808  
Carrier File No. 2009-034153

**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 call and assign Mr. J. Nicely to perform overtime switch maintenance service at Covington Yard on July 12, 2008 and instead called and assigned junior employee M. Bryant.
2.     As a consequence of the violation referred to in Part 1 above, Claimant J. Nicely 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 September 9, 2008, the Organization filed the instant claim asserting that the Carrier utilized Track Inspector Matthew Bryant to perform maintenance on switches in Covington Yard on Saturday, July 12, 2008. According to the Organization, this work was performed by Bryant for ten hours on overtime from 7:00 am to 5:30 pm. The claim contends Claimant, who is senior to Bryant,

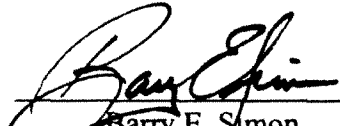
should have been used to perform this work. The Carrier denied the claim on October 24, 2008, asserting that Bryant did not work on July 12, 2008 according to payroll records.

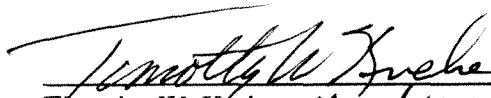
The parties agree that the only question before the Board is whether Bryant worked on the day in question. In support of its position, the Organization has proffered a handwritten note from Bryant, dated December 30, 2008, stating, "I worked July 12, 08 and the time sheets were never changed so I had to fill out Tues - Fri cleaning switches in Covington." The Carrier, on the other hand, has submitted Bryant's payroll record for July 2008. It does not show any work performed by him on July 12, nor does it show any compensation paid to him for that day. For Tuesday through Thursday, July 15-18, the record reflects that he worked ten hours each day at the straight time rate, which appears to be his standard workweek. If Bryant had worked on Saturday and charged the hours to the following Tuesday through Friday, as the Organization contends, the Board does not find those additional hours reflected in his payroll record.

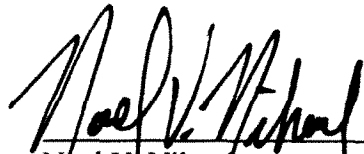
It is essential to the Organization's case that it prove that a junior employee performed the service it contends should have been performed by Claimant. We find that the payroll record does not support the contentions made by the Organization. This record, which the Carrier is required to maintain in the regular course of its business, is more persuasive than the assertions made by the Organization. The note from Bryant, written six months after the date of claim, is insufficient to overcome the Carrier's evidence. It is unlikely that Bryant would have worked those additional hours without compensation, and if the Carrier's payroll record is erroneous there would be some other record, such as a check stub, to show that Bryant was compensated for the hours.

Inasmuch as we cannot find that the Organization's claim is supported by the facts, we must deny it.

AWARD: Claim denied.

  
Barry E. Simon  
Chairman and Neutral Member

  
Timothy W. Kreke *March 4, 2011*  
Employee Member

  
Noel V. Nihou  
Carrier Member *3/4/11*

Dated: *February 15, 2011*  
Arlington Heights, Illinois

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