

NATIONAL MEDIATION BOARD  
WASHINGTON, DC

PUBLIC LAW BOARD NO. 7163

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
DIVISION – IBT RAIL CONFERENCE

AND

CSX TRANSPORTATION, INC.

Docket No. 104  
Employee: L. Lofty

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Neutral Member: Barbara Zausner  
Carrier Member: Robert A. Paszta  
Organization Member: Timothy W. Kreke

STATEMENT OF CLAIM

- 1- The Agreement was violated when the Carrier failed to assign Mr. L. Lofty to operate a Gradall between Memphis, Tennessee and Nashville, Tennessee beginning May 4, 2010 and continuing, and assigned junior employee J. Bagwell. (System File I58752510/2010-071967)
- 2- The claim referenced in Part (1) above, as appealed by Vice Chairman A. H. Shelton on September 20, 2010 to Director Employee Relations N. V. Nihoul shall be allowed as presented because said claim was not disallowed by Director of Employee Relations N.V. Nihoul in accordance with Rule 24(b).
- 3- As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant L. Lofty shall now be compensated ‘... for the total hours including overtime, made by Mr. Bagwell, beginning on May 4, 2010 and continuing [until] the violation stops, at the respective straight and overtime (Machine Operator) rate of pay.

## FINDINGS

Upon the whole record and on the evidence, the Board finds that the parties herein are Carrier and Employer within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

This claim was filed at the same time as Case No. 103, on Behalf of Mr. R. Daniel. The Organization cites Rule 24 (b) and contends the Carrier's highest designated labor relations officer did not respond within sixty days after October 26, 2010. The Organization wrote to the Carrier on February 9 notifying it of the violation. The Organization claims it never subsequently received any evidence to indicate that the claim was timely disallowed. It cites the principle "that undenied/unchallenged statements must be accepted as fact...."

On the merits, the Organization cites Rules 1,3,4 and 11.

The Carrier denied the claim asserting that the Organization failed to state how the rules were violated and offered no support or documentation. It also cited an emergency due to a flood, alleged that the Claimant did not request to operate the Gradall during the period in question and said the claim is a duplicate claim (pointing to Case No. 103, Daniel).

The Carrier claims Mr. Nihoul denied the claim by letter dated December 15, 2010 which letter is in evidence as Carrier Exhibit D.

The Organization's procedural claim cannot be sustained. The denial letter is part of the record. It must be noted, as in case No. 103, that the parties do not customarily use certified mail or other proof of mailing when they exchange claims and responses. Items mailed in the normal course of business are generally presumed to have been received. Although the Organization asserts that the denial letter is new evidence, nothing in the record identifies the December 15 letter as a new document.

Unlike Case No. 103, the claim in this matter clearly identifies the junior employee as J. Bagwell. The claim is not a duplicate claim; it concerns a separate claimant. The emergency defense was raised by the Carrier in the initial denial.

The Carrier also contends that the Organization has not provided any proof that the Claimant was not offered the work, the specific location of the work is not identified. The Carrier argues it "is not required to develop a claim on behalf of a petitioner."

The Carrier points to record rainfall on May 1-2, 2010 in the Nashville area. It cites awards allowing it great latitude in emergencies. Claimant earned over 24 hours of overtime during that month and there is no showing that anyone lost work opportunity.

We conclude that the work at issue was performed under emergency conditions including unusually heavy rainfall, many miles of

washed out tracks and logistics issues with respect to the location of equipment.

AWARD

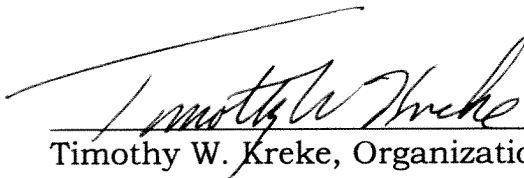
Claim denied.

A handwritten signature in cursive script, reading "Barbara Zausner".

Barbara Zausner, Neutral Board Member  
January 11, 2012

A handwritten signature in cursive script, reading "Robert A. Paszta".

Robert A. Paszta, Carrier Member

A handwritten signature in cursive script, reading "Timothy W. Kreke".

Timothy W. Kreke, Organization Member