

NATIONAL MEDIATION BOARD
WASHINGTON, DC

PUBLIC LAW BOARD NO. 7163

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE

AND

CSX TRANSPORTATION, INC.

Docket No. 106

Employee: C. Jones, J. Hacker, D. Schultz, M. Reer, T. Fink

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

STATEMENT OF CLAIM

- 1- The Agreement was violated on January 23, 2010, when the Carrier failed to call and assign Messrs. C. Jones, J. Hacker, D. Schultz, M. Reer and T. Fink to perform overtime service (install a frog) at Mile Post BI 116.6, west end of the Block Swap Yard on the Akron West Seniority District and instead called and assigned Messrs. T. Sheasbie, D. William, B. Coppus, K. Thrust and Glenn Gee. (System File H44901010/2010-064430)
- 2- The claim as presented by Vice Chairman R. Farmer on January 27, 2010 to Mr. T. S. Thoburn shall be allowed as presented because the claim was not disallowed in accordance with Rule 24(a).
- 3- As a consequence of the violation referred to in Part (1) and/or (2) above, Claimants C. Jones, J. Hacker, D. Schultz, M. Reer and T. Fink shall now each be compensated for ten hours of overtime.

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.

The Organization filed this claim alleging a violation of the Claimants' seniority rights. The designated Carrier Officer allegedly failed to render a decision within the time limits set forth in Rule 24; i.e., within sixty days from the date the claim was filed. When the Organization is not notified of the decision, "the claim will be allowed." The Organization notified the Carrier by letter dated April 14, 2010 of the failure to render a decision on the January 27, 2010 claim.

Without prejudice to its procedural claim, the Organization also contends the Carrier improperly assigned the work involved here to other employees than the Claimants.

The Carrier maintains it responded to the January 27, 2010 claim by letter dated March 19, 2010. (Carrier's Exhibit B). In its letter, the Carrier maintained the work at issue was offered to the claimants who declined the work.

The burden of proving both the procedural and the substantive claims is on the Organization. The procedural claim must be addressed first in light of the mandatory wording of Rule 24 that the claim is to be allowed if procedural requirements are not met. This holding is supported by numerous NRAB Third Division Awards. Except for the lack of a signature, the letter appears to have been created and mailed on March 19, 2010. The absence of a signature is not covered by any rule

and is therefore not dispositive of the question of whether the document was sent.

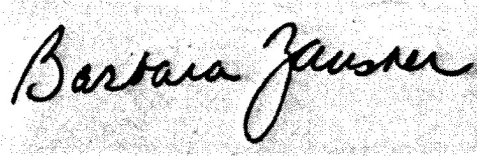
The practice on the property is for the parties to use the regular mails when transmitting claims and denials. Items mailed in the ordinary course of business are considered to have been received.

The only evidence in the record that the response was not timely received is the Organization's assertion to that effect. The Carrier's denial creates an irreconcilable question of fact that is beyond the purview of this Board. The Organization has failed to meet its burden of proving the procedural claim.

The issue on the merits is similarly based on an assertion that the Claimants were not offered the work which is balanced by the Carrier's contention that the work was offered and the employees refused the opportunity. The Organization offered no further evidence. As in Docket No. CL-30102, Award No. 29630 of the Third Division of the NRAB, the record consists of "assertion countered by opposing assertion" resulting in a failure of proof of the Claim.

AWARD

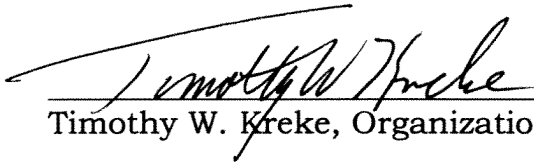
Claim denied.

A handwritten signature in cursive script, reading "Barbara Zausner". The signature is written in black ink on a light-colored, slightly textured background.

Barbara Zausner, Neutral Board Member
January 11, 2012

A handwritten signature in cursive script, reading "Robert A. Paszta". The signature is written in black ink on a light-colored background.

Robert A. Paszta, Carrier Member

A handwritten signature in cursive script, reading "Timothy W. Kreke". The signature is written in black ink on a light-colored background.

Timothy W. Kreke, Organization Member