

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD No. 7163**

Brotherhood of Maintenance of Way	)		
Employees Division, IBT Rail Conference	)		
	)		
vs.	)	Case No.	110
	)	Award No.	110
	)		
CSX Transportation, Inc.	)		

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

1. The Agreement was violated on June 6, 2010, when the Carrier failed to call and assign B&B Department employees W. Neisz, D. Love and D. Brown to overtime on June 7, 2010 on the Henderson Bridge and instead called and assigned junior employees R. Clark, A. Weisheit and R. Carter (System File I56751110/2010-068119).
2. As a consequence of the violation referred to in Part 1 above, Claimants W. Neisz, D. Love and D. Brown shall now each be compensated for ten (10) hours at their respective overtime rates of pay."

[BMW Submission at 1]

Findings:

Public Law Board No. 7163, upon the whole record and all the evidence, finds that (1) the parties to this dispute are Carrier and Employees within the meaning of the Railway Labor Act as amended, (2) the Board has jurisdiction over this dispute, and (3) the parties to the dispute were accorded due notice of the hearing and participated in this proceeding.

This claim was timely presented by the Organization and responded to by the Carrier at all stages of processing including conference. With the unresolved claim handled in the customary and usual manner, the record established by the parties is now before the Board for adjudication.

Claimants are regularly assigned to positions on the B&B Service Lane Work Territory Mobile Gang 6K89 in the Henderson Seniority District for the Nashville Division. The claimed-against employees are junior to Claimants and are also assigned to positions on a mobile gang in the B&B Service Lane Territory in the same seniority district and division as Claimants.

On June 6, 2010 the Carrier assigned the claimed-against junior employees to gather material for a project on the Henderson Bridge to be performed on June 7, 2010. BMW states that Claimants were available but not assigned this non-continuous overtime work performed on a rest day (Sunday, June 6) in preparation for the work to be performed the next day (Monday, June 7). Prior June 6 Claimants worked on this bridge as part of their regular assignments and on June 5 they were notified to report for work on the bridge beginning June 7.

The Organization states that Rule 17 Section 1(a) extends preference to the senior employee in the required job class for overtime work performed outside the regular tour of duty whether it is a continuation or non-continuation with the day's work. Since Claimants are the senior employees within the required job class and are regularly scheduled for and perform work on the Henderson Bridge this overtime should have been assigned to them. The claim (June 17, 2010) alleges that the Carrier's assignment of this overtime work to the junior employees violates Rule 4 - Seniority, Rule 11 - Overtime and Rule 17 - Preference for Overtime Work.

In denying the claim the Carrier states that the junior employees were assigned to and working on the project at Henderson Bridge as part of their regular duties. The overtime work (June 6) aligned with their project work and was continuous with the work to be performed the next day (June 7). They were familiar with the gathered material unlike the Claimants with their assignments on another part of the Division.

Since the junior employees were performing this project work during their regularly assigned work period, the Carrier states that overtime was assigned to them in accordance with Rule 17, Section 2 where "the gang ordinarily doing this type of work during the regularly assigned work period would be given preference for the continuation of this work outside of the regularly assigned work period[.]"

The Board must decide which set of service-lane employees (senior Claimants or junior claimed-against employees) should have been called for the overtime work.

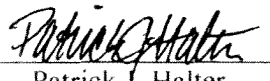
Claimants perform work on the Henderson Bridge as part of their regular duties and were effectively assigned to work on the Bridge with the notice on June 5 to report for that work beginning June 7. As of June 5 the Claimants were no longer assigned to another project on a different part of the Division but were assigned to the Henderson Bridge. As the senior employees on the Bridge as of June 5, Claimants should have received preference for the overtime work on June 6.

Given the circumstances presented by this claim the Board finds that Third Division Award 37317 and Award 56 of PLB 7163 are instructive in the disposition of the claim. That is, Rule 17 Section 1 extends preference for this overtime to Claimants, the senior employees in the required job class regularly assigned to perform these duties.

When overtime opportunities arise, whether in continuation of the day's work or not, the senior employee in the particular job class who ordinarily performs the work is to be given the preference for the overtime opportunity.

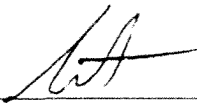
Award:

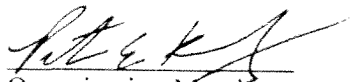
Claim sustained.



Patrick J. Halter
Neutral Member

PLB No. 7163 Case No. 110



Carrier Member
Robert A. Paszta

Organization Member
Peter E. Kennedy

Dated this 27th day of June, 20 12