

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

Brotherhood of Maintenance of Way	)	
Employees Division, IBT Rail Conference	)	
	)	
vs.	)	Case No. 113
	)	Award No. 113
	)	
CSX Transportation, Inc.	)	

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

1. The Agreement was violated when the Carrier assigned junior employee G. Perry, instead of Claimant E. Downey, to perform overtime track repair service on April 16, 17, 18, 24, 30 and May 1 and 7, 2010 (System File G31804010/2010-071436).
2. As a consequence of the violated referred to in Part (1) above, Claimant E. Downey shall now be paid for a total of seventy-eight (78) hours at the overtime rate of pay."

[BMWE 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.

According to the Organization the Carrier violated Rules 1, 3 and 17 when it failed to call and/or offer overtime work to the senior employee (Claimant) thereby allowing an improper assignment to a junior employee. The work involved rail repairs between Mile Post CAB 0.0 and Mile Post CAB 119.00 on the Rivanna Subdivision in the Richmond Seniority District on the Central East Service Lane Work Territory.

Rule 17 accords preference for this overtime to Claimant, BMWE argues, because he ordinarily performs these tasks as part of his regular duties. Rule 17 Section 1(b) states that when employees are needed for overtime within a designated territory the employees within that territory are offered and/or called in order of their seniority. Since the work was performed outside the normal tour of duty and was not a continuation of the day's work, Claimant receives preference for it.

Claimant's written statement, attached to the Organization's appeal of the claim denial, confirms that he did notify the Roadmaster he was available and refutes the Roadmaster's email that Claimant did not step forward for this work opportunity.

BMW asserts that its prima facie showing of numerous rules violations was not countered with any probative evidence by the Carrier. For example the Carrier does not identify any date(s) when the Roadmaster informed employees of this work and it failed to submit documents - - telephone records, email correspondence or written notes - - to support its position that the Roadmaster offered the overtime to Claimant. In the absence of such documents the only conclusion is that the Roadmaster did not notify or contact Claimant.

The Carrier denied the claim stating that the Roadmaster informed Claimant and other employees of the work opportunity but the Claimant never responded. The Carrier has no record of Claimant's "phantom" statement where he allegedly requested the work but was informed he did not have the qualifications. The Organization's assertions, without more, do not satisfy its burden of proof and fail to establish the claim.

In the Board's view, the disposition of this claim centers on the Claimant's written statement wherein he asserts that he notified the Roadmaster of his availability for this overtime work as witnessed by four employee signatures on the statement. The Carrier asserts that the "phantom" statement was not attached to any document it received in claim processing whereas the Organization asserts it was attached to its appeal of the claim denial.

The text of the Organization's appeal to the claim denial does not identify any written statement by Claimant as attached to or enclosed with the appeal. The absence of any reference to the Claimant's statement in the text of the appeal is not construed favorably for the Organization.

The Claimant's statement is identified for the first time in the text of the Organization's response to the Carrier's denial of BMW's appeal. Even if accepted as part of the on-property exchange of documents and showing that Claimant placed the Roadmaster on notice of his availability, the statement is not supportive of the claim.

Specifically, Claimant states:

I did ask Roadmaster Ostrowsky if I could work. Mr. Ostrowsky said I could not work because I was not qualified to get a 704-707 work authority. This is not my fault! Get me qualified!

The Board construes Claimant's response as recognition that he was not qualified for the overtime work. Since Claimant was not qualified the claim is denied.

Award:

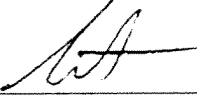
Claim denied.



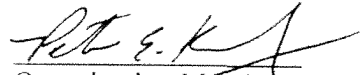
Patrick J. Halter
Neutral Member
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Carrier Member
Robert A. Paszta



Organization ~~Member~~
Peter E. Kennedy

Dated this 27th day of June, 20 12