

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

Brotherhood of Maintenance of Way)		
Employees Division, IBT Rail Conference)		
)		
vs.)	Case No.	115
)	Award No.	115
)		
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 B. Ramsey, instead of Mr. B. Hendrickson, to work overtime making repairs on a bridge at Mile Post 00C273.8 at Knoxville, Tennessee on August 20, 2010 (System File G38757910/2010-081568).
2. As a consequence of the violation referred to in Part (1) above, Claimant B. Hendrickson shall now be paid for a total of ten (10) 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.

Claimant is assigned to the foreman position on Service Lane Territory Mobile Gang 6C83 in the KD Seniority District for the Appalachian Region. He regularly performs work on bridges within the District including the bridge at Mile Post 00C273.8. The claimed-against employee - - junior to Claimant - - is assigned to the foreman position on Service Lane Territory Mobile Gang 6C79 in the same seniority district and division as Claimant.

On August 20, 2010 the Carrier assigned overtime work for repairs on this bridge to the junior employee. In its claim BMWE states this assignment involves non-continuous overtime because the work performed on August 20 (the junior employee’s rest day) was not a continuation of the work performed on August 19. This separate and distinct overtime assignment is a loss of work opportunity for Claimant.

The Organization offers Claimant’s statement where he asserts that his gang (6C83) was working on the bridge “shimming up ties” on August 19 whereas the junior employee’s gang (6C79) was

changing and raising timbers and not changing a stringer. The stringer broke on August 19 and was replaced on August 20. Claimant asserts that the junior employee called the supervisor to state that he did not want to work on August 20.

Based on Third Division Award 37317 and Award 56 of PLB 7163 the Organization asserts that Rule 17 extends preference for this non-continuous overtime to Claimant, the senior employee 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.

Claimant should have been called for this overtime because it was a continuation of the duties he was performing on this bridge. By not assigning this overtime to Claimant, the Carrier violated Rule 4 – Seniority, Rule 11 – Overtime and Rule 17 – Preference for Overtime Work.

In denying the claim the Carrier states that Rule 17, Section 2 governs this matter. That is,

...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 with the employees in the gang being called in the order of their seniority in the required job class.

In accordance with Section 2 the Carrier assigned the junior employee because he had commenced working on the stringer as part of his duties during his regularly assigned work period (August 19) and that work continued outside of that employee's regularly assigned work period (August 20).

In support of its position the Carrier relies on Award 15 of PLB 7163 where the Board held that a mobile gang employee performing work during his regularly assigned work period was properly preferred for related work outside of the regularly assigned work period over a senior non-mobile employee. CSXT asserts that BMWF fails to establish that Claimant was working on the stringer on August 19.

As for Claimant's statement the Carrier labels it as self-serving and not logical. For example, the Claimant asserts the junior employee informed the supervisor he did not want to work on August 20 but the junior employee did work on that date.

Seniority preferences for overtime work opportunities are addressed in Rule 17. Section 1 addresses the assignment of overtime work opportunities accruing to non-mobile gangs while Section 2 addresses the assignment of overtime work opportunities accruing to mobile gangs. There is no dispute that both the Claimant and the junior employee were assigned to different mobile gangs in the same seniority district and division. Accordingly, Rule 17 Section 2 is the provision of the Agreement that governs in the overtime work assignment involved in this dispute.

In this instance, the Board finds that the junior employee was the employee on the mobile gang regularly assigned to perform the type of work involved here (i.e., changed and raised timbers and commenced related work involving the stringer during his assigned work period on August 19). Efforts to complete the related work on August 19 were stymied due to the unavailability of a stringer until the next day (August 20) which is when the junior employee's mobile gang

continued the related work to completion – outside of their regularly assigned work period. Therefore, the Board finds that the Carrier did not violate the Agreement in the overtime assignment involved in this dispute.

Award:

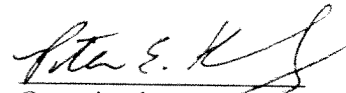
Claim denied.



Patrick J. Halter
Neutral Member
PLB No. 7163 Case No. 115



Carrier Member
Robert A. Paszta



Organization Member
Peter E. Kennedy

Dated this 27th day of June, 20 12