

PUBLIC LAW BOARD NO. 4138

Award No.: 23

Case No.: 23

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM

First: that the Agreement was violated when junior employe L. R. Belmar, of Gang 6E26 (same gang as claimant's) was assigned overtime.

Second: that claimant C. M. Rowland be paid 32 1/2 hours overtime from November 11 through November 27, 1985.

FINDINGS

On the dates in question, Claimant worked on Rail Gang 6E26, which was laying welded rail at Louisville, Kentucky. Gang 6E26 was composed of 90 men and was regularly divided into two units -- tear-out and restoration. Claimant was assigned as assistant foreman on the tear-out crew, which operated in front of the restoration crew. Assistant Foreman L. R. Belmar was in charge of the restoration crew. Claimant is senior to Belmar.

Both crews worked four 10-hour days within the jurisdiction of the same Rail Gang Supervisor and Foreman. Since the restoration crew worked

behind the tear-out crew, it sometimes worked longer than the tear-out crew in order to restore the track before "knocking off." On the dates in question, the restoration crew was required to work overtime (or more overtime than the tear-out crew) in order to complete the restoration of the track.

Rules 30 (a) and (b) provide:

OVERTIME.

30(a) Actual work continuous with a regularly assigned 8-hour work period shall be paid for on the minute basis at time and one-half rate, with double time payment accruing after 16 continuous hours of work. All work within a regular 8 hour work period will be paid for at straight-time rate, except that when double-time payment begins, the employee will continue on double-time payment until released.

Time traveling and waiting will not be considered as time worked, but will be payable under the rules covering that service.

The starting time of new employees temporarily brought into the service in emergencies will be the time they commence work or are required to report. (Underscoring added)

30(b) Employees, who desire to be considered for calls under Rule 31, will provide the means by which they may be contacted by telephone or otherwise, and will register their telephone number with their foreman or immediate supervisory officer. Of those so registered, calls will be made in seniority order as the need arises.

A reasonable effort must be made to contact the senior employee so registered, before proceeding to the next employee on the register. Except for section men living within hailing distance of either their foreman's living quarters or their tool house or head-quarters station, and for men living in camp cars when they are present at the camp cars, an employee not registered as above shall not have any claim on account of not being worked on calls.

The issue to be decided in this dispute is whether the Carrier violated the Agreement by not assigning Claimant the overtime work on the restoration crew on the dates in question when Belmar received that overtime work; and if so, what should the remedy be.

The position of the Organization is that the Carrier violated the Agreement. The Organization maintains that Claimant should have been assigned the position of assistant foreman on the restoration crew on those days when the tear-out crew knocked off work before the restoration crew did so. The Organization contends that Gang 6E26 is one gang (noting that all gang members report for and stop work at the same location), not two separate gangs, and that Claimant's seniority to Belmar entitled him to fill Belmar's position within the gang and secure the overtime as soon as Claimant was available. The Organization points out that the two crews were working in close physical proximity, so that a change of personnel would not be burdensome.

The position of the Carrier is that it did not violate the Agreement, asserting that its regular practice is for an assistant foreman in charge of either of the two separate units to remain in charge until the work is completed. The Carrier maintains, by implication, that this is accepted by the Organization. Further, the Carrier contends that the overtime worked was not worked on a call basis, governed by Rule 30(b), but on the basis that it was a continuation of regularly assigned work, governed by Rule 30(a). As a continuation of regularly assigned work, it was not obligated to honor Claimant's seniority, and therefore it properly permitted Belmar to

continue in the assistant foreman's position and earn the overtime.

Finally, the Carrier points out that the Organization's position is unreasonable and would demand the massive swapping of jobs throughout the gang when the tear-out crew knocked off.

After review of the entire record, the Board finds that the Carrier did not violate the Agreement.

The Organization has not sustained its burden of proving a violation of the Agreement because it has not shown that this is a call basis overtime situation, governed by Rule 30(b). The Carrier, on the other hand, has proved that it has acted within its rights under the Agreement. The overtime work involved here is simply a continuation of the regular work day. The question of the seniority of the two assistant foremen is not relevant to the issue of who may work the overtime. Historically, the assistant foreman of a unit, such as Belmar, is permitted to work as the leader of his restoration unit in order to finish its day's work. As the leader of the unit, Belmar has the right to earn the overtime according to the provisions of Rule 30(a).

Moreover, the position advanced by the Organization has the potential for massive disruption of the Carrier's operations, because it could require a full scale rearrangement of personnel so that senior employees could work the available overtime. This disruption due to rearrangement would be extremely burdensome and seems to be precisely the situation Rule 30 is designed, in part, to avoid.

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AWARD

Claim denied.

Nicholas P. Pines  
Neutral Member

B. Claude Sweet  
Carrier Member

Bryce L. Hall  
Organization Member

Date: April 3, 1990