

AWARD NO. 8
CASE NO. 8

PUBLIC LAW BOARD NO. 4604

PARTIES) **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**
TO)
DISPUTE) **CSX TRANSPORTATION, INC.**

STATEMENT OF CLAIM

Claimant C. G. Armenta, ID 186300, be paid 4 hours overtime for November 27, 1987 and 2 hours and 40 minutes for December 20, 1987 at Foreman's rate of pay.

OPINION OF BOARD

Claimant was the regularly assigned foreman on District Gang 6E25. G. L. Brown was the regularly assigned foreman on Gang 5E27 headquartered at Osborne Yard, Louisville, Kentucky.

On November 27 (a holiday) and December 20, 1987 (a rest day), emergency work was required at Osborne Yard. Brown was called but was unavailable for overtime. The Carrier then called S. Reid, who was working as a truck driver on Gang 5E27 (and who was qualified as a foreman), to perform the foreman's overtime work. However, Claimant's seniority is superior to Reid's. The Organization contends that Claimant should have been called over Reid.

The parties have cited various rules to us to support their arguments. Rule 6(b) states, in pertinent part:

The seniority of the successful applicant for a bulletined position, in promotion, shall date from the closing date of the advertising bulletin, except that if he fails to qualify within 60 calendar days from the date he began work on the position, he will not acquire a seniority date as a result of having been assigned thereto. Also, a successful applicant in promotion may not bid back to the lower rank which he left until after at least a month's work in the higher rank. It is understood that an employee bidding in a position in promotion will actually work that position before being given a seniority dating in the higher rank. Also, days on which an employe is on vacation will be counted in the accumulation of seniority in promotion.

Rule 30(b) states, in pertinent part:

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 foremen or immediate supervisory officer. Of those so registered, calls will be made in seniority order as the need arises.

Rule 30(f) states:

The senior available men shall be given preference in the assignment of overtime work on their home sections.

Rule 30(g) states:

Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee.

Rule 45(b) states, in pertinent part:

If, for any reason, an emergency arises on a foreman's rest day or holiday, and he is available and performs work, he will be paid only under the provisions of Rule 31. If he is not available to protect the emergency work, such work may be performed by any available track foreman, assistant track foreman, or qualified employee and the foreman who is not available will not receive compensation for such emergency work. Section repairman shall be used in accordance with Rule 30(f), except when the man who acts as foreman is from another section he may use repairmen from his own regular gang.

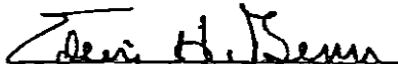
Under the facts of this case, we find the Carrier's reliance upon Rules 45(b) and 30(f) sufficient to require that we deny this claim. Here, on the holiday and rest day, the Carrier called S. Reid, the senior member of Gang 5E27 after regularly assigned foreman Brown to perform the foreman's overtime work for Gang 5E27 rather than calling Claimant, a foreman on another gang. Under Rule 45(b), which specifically addresses the unavailability of a foreman on a rest day or holiday, since Brown was "not available to protect the emergency work, such work may be performed by any available track foreman, assistant track foreman, or qualified employee...." Although working as a truck driver, it appears undisputed that Reid was nevertheless "qualified" for the work under this rule. Under Rule 30(f), Reid was the senior available employee on Gang 5E27 and entitled to "preference in the assignment of overtime work on [his] home section". Read together,

Rules 45(b) and 30(f) permit the assignment of this particular work to the junior employee Reid rather than to Claimant since Reid was qualified and entitled to preference over Claimant on Reid's home gang.

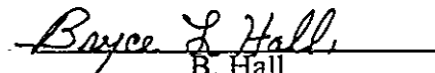
While the Organization's arguments under the other cited rules are not without logic, under the well-accepted doctrine of contract construction that the specific governs the general, the specific language found in Rules 45(b) and 30(f) takes precedent in this case over the more general language relied upon by the Organization. In this case, the key specific language is found in Rule 45(b) - "an emergency ... on a foreman's rest day or holiday ..." which permitted the use of "any available ... qualified employee" for the foreman's emergency overtime work. Coupled with Rule 30(f)'s preference of assignment of overtime work to the senior man on his home section, the Carrier's position that Reid was appropriately called in this matter is well-taken.

AWARD

Claim denied.


Edwin H. Benn
Neutral Member


L. Womble
Carrier Member


B. Hall
Organization Member

Jacksonville, Florida
February 24, 1989