

AWARD NO. 147

Case No. 147

Organization File No. G65505712

Carrier File No. 2012-122530

**PUBLIC LAW BOARD NO. 7163**

PARTIES     ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,  
              )    INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
TO            )  
              )  
DISPUTE     ) CSX TRANSPORTATION, INC.

**STATEMENT OF CLAIM:**

1.     The Agreement was violated when the Carrier assigned junior or out of class employee J. Wilson to perform vehicle operator duties (dump truck operation) on February 29 and 30, 2012 and failed to assign such work to Claimant J. Templeton.
2.     As a consequence of the violation referred to in Part 1 above, J. Templeton shall now be compensated five and a half (5.5) hours of overtime.

**FINDINGS:**

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

Because of a washout at Clarksburg, West Virginia, the Carrier contends it needed to have a dump truck sent there from Chillicothe, Ohio. It consequently directed Welder J. D. Wilson, who was headquartered at Marietta, Ohio, to perform this service. The Organization says the dump truck was moved from Parkersburg, West Virginia to Clarksburg, and that the work should have been performed by Claimant, who is senior to Wilson as a vehicle operator and was headquartered at

Parkersburg. It insists he was available, qualified and willing to perform this work. Consequently, it asks that Claimant be compensated at the overtime rate of pay for the five and one-half hours it took Wilson to make the trip.

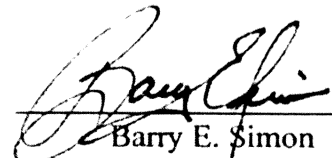
Although the parties' arguments revolved chiefly around the question of whether the movement of a vehicle from one point to another without any other work being performed is considered the "operation" of the vehicle, and therefore covered by the Scope Rule, the Board finds that it is not necessary to address that philosophical quandary. We note, though, that the General Chairman acknowledged that "the Scope Rule does not restrict the Carrier's rights to move vehicles from one location to another location."

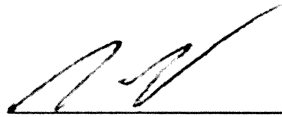
The Board is satisfied that the work performed was necessary for the handling of an emergency situation, namely a washout at Clarksburg. Using Wilson was apparently the most expeditious way to get the truck to Clarksburg at the time. Arbitral boards have recognized that carriers are given greater latitude in getting work done in emergency situations. See, for instance, Third Division Awards 12299, 26677 and 37459.

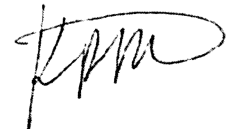
Notwithstanding this factor, Claimant would have a valid claim only if he would have been the appropriate employee to be called to perform the work. Obviously, the Organization's claim was based upon its contention that the truck was at Parkersburg, which is where Claimant worked. Claimant's handwritten explanation of the claim only states the truck was driven to Clarksburg; it does not indicate where the truck was originally located. In light of the Carrier's assertion that it was located at Chillicothe, which is a considerable distance from Parkersburg, the Board cannot find that the Organization has met its burden of proof that Claimant was in the same location as the truck.

The record reflects that Chillicothe is located within the Hocking Seniority District while Claimant is assigned to the Monongah West Seniority District. The Organization has not shown why the Agreement would have required the Carrier to send him outside his seniority district to pick up the truck.

AWARD: Claim denied.

  
Barry E. Simon  
Chairman and Neutral Member

  
Andrew Mulford  
Employee Member

  
Rob Miller  
Carrier Member

Dated: September 4, 2014  
Arlington Heights, Illinois