

AWARD NO. 164
Case No. 164

Organization File No. HodomC.012
Carrier File No. 2012-132632

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 offered/called junior employee J. Levenson to perform vehicle operator overtime in connection with transporting employees for a rail grinding project on the Rochester Sub-Division on September 25 and 26, 2012 without calling and assigning such work to senior employee Claimant R. Hodom.
2. As a consequence of the violation referred to in Part 1 above, R. Hodom shall now receive 12 hours overtime pay along with all other proper relief.

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.

On the dates of claim, Claimant was regularly assigned as a Welder Foreman at Rochester, New York. According to the Organization, J. J. Levenson, who is junior to Claimant, was assigned as a Class "A" Machine Operator, also at Rochester. At this time, the Carrier was using a contractor to operate a rail grinder in this territory. In order to minimize the disruption to train operations, the

rail grinder worked at night. To provide transportation support for the rail grinding operation, the Carrier utilized Leverson and Track Foreman S. Carter to operate vehicles for transporting employees and material between the hours of 7:00 pm and 7:00 am. These employees were then directed to observe paid rest periods during their regularly assigned hours of 7:00 am to 3:30 pm. In addition to their regular pay, Leverson and Carter were compensated for twenty-four hours at the overtime rate.

The Organization argues Claimant should have been used to perform this work in lieu of Leverson based upon Claimant's greater seniority. It cites Rule 17 - Preference for Overtime Work, which reads, in pertinent part, as follows:

Section 1 - Non-mobile gangs:


(a) When work is to be performed outside the normal tour of duty in continuation of the day's work, the senior employee in the required job class will be given preference for overtime work ordinarily and customarily performed by them. When work is to be performed outside the normal tour of duty that is not a continuation of the day's work, the senior employee in the required job class will be given preference for overtime ordinarily and customarily performed by them.


The Carrier has denied the claim, asserting that Leverson "worked eight hours with the rail grinding team as part of his regular assignment on both dates claimed, and then worked the overtime claimed as a continuation of this work." However, the Carrier has offered no evidence to support its contention that Leverson was regularly assigned to a position in support of the rail grinding operation. The Board notes that the Organization had requested that it be allowed to review relevant management records that would show who was assigned to work with the rail grinder pursuant to Rule 24(i) of the Agreement. Because the Carrier did not provide the requested documentation, the Organization asks the Board to draw an adverse inference against the Carrier. We find that we need

not go so far as to draw an adverse inference when it is the Carrier's burden to prove its affirmative defense and it fails to do so. Because the Carrier has not met its burden of proof, we cannot find that Leverson's work from 7:00 pm to 7:00 am was a continuation of his regularly assigned duties.

The Organization having established that Claimant was senior to the employee used, we must find that the Carrier violated the Agreement by failing to call him for this overtime work. Accordingly, we must sustain the claim and direct that Claimant be compensated for the twenty-four hours of overtime compensation he would have received had he been properly called for the work.

AWARD: Claim sustained. Carrier is directed to comply with this Award within 45 days.


Barry E. Simon
Chairman and Neutral Member


Andrew Mulford
Employee Member


Rob Miller
Carrier Member

Dated: April 2, 2015
Arlington Heights, Illinois