

AWARD NO. 165  
Case No. 165

Organization File No. KeenerC.012  
Carrier File No. 2012-128009

**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 employees J. Freshour, D. Menter and M. Kimmis to perform overtime rail train (trackman) work on the Albany Service Lane on July 6, 7 and 8, 2012 without calling and assigning such work to senior employee Claimant J. Keener.
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Keener shall now be compensated for all overtime hours worked by the junior employees on July 6, 7 and 8, 2012.

**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.

In July 2012 Claimant was regularly assigned to a lubricator position on a mobile gang working on the Albany Service Lane. His work week consisted of ten hours a day, Monday through Thursday. On Wednesday, July 4, Claimant was off for the holiday. He elected to take Thursday, July 5, off for Safety Personal Time (SPT), a paid day off granted by the Carrier in recognition of

an employee's safety record. It is undisputed that employees junior to Claimant were called for overtime work on Friday, July 6, Saturday, July 7, and Sunday, July 8. The Organization argues Claimant was available to perform this work on his regularly assigned rest days, and should have had preference over the employees used based upon his greater seniority.

The Carrier does not deny that Claimant would have been called for this work except for the fact that he had taken a paid personal day on Thursday. This, says the Carrier, made him unavailable for work until he returned the following Monday. In support of its position, the Carrier cites Third Division Award 39146, which held:


Preference for overtime assignments is a major benefit of seniority. However, numerous Third Division Awards establish that an employee on vacation or personal leave is not considered available for overtime until he returns to his regular assignment, and a Carrier is not required to call employees on vacation or personal leave for overtime work. See Third Division Awards 23198, 29092, 29261 and 31790.


While we agree that there is an historical practice of not considering employees on vacation as being eligible for vacation until they return to their regular assignment, we find no support for extending this practice beyond vacationing employees. Except for Award 29261, which deals only with the exercise of seniority rights, the Awards cited concern only vacations. No Awards have been cited by the Carrier that involve any other days off. All of the Awards cited, as well as the Awards cited therein, refer to historical practices rather than to contractual provisions. We have reviewed the 1941 National Vacation Agreement, as well as the Wayne Morse Awards interpreting it, and find no reference to the issue presented herein. Thus, it was appropriate for the various Referees to rely upon past practice. There is, however, no past practice cited that addresses personal leave days. Furthermore, there is no explanation in Award 39146 as why the Referee would treat personal leave


days, which are generally taken as a single day off, in the same manner as vacations, which are usually taken in week increments. Without such an explanation, we cannot consider Award 39146 to have any precedential value with respect to personal days.

The Board concludes that Claimant should have been called to work on his regular rest days to perform the overtime work in accordance with his seniority. The Carrier's failure to do so was in violation of the Agreement. Claimant, therefore, is entitled to the compensation he would have earned had he been allowed to 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