

AWARD NO. 166
Case No. 166

Organization File No. RosarioC.112
Carrier File No. 2012-131168

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 Track Inspector B. Gunter to perform overtime work on July 21, 2012 without calling and assigning the work to Claimant J. Rosario.
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Rosario shall now be allowed four and one-half (4.5) hours at his appropriate time and one-half rate of pay.

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.

At the time of this claim, Claimant was regularly assigned as a Track Inspector and spent at least part of July 21, 2012 installing speed restriction signs on the Erie West Subdivision. He went on duty that day at 6:30 am and worked until 10:30 pm. At 9:54 pm the Carrier called Track Inspector B. Gunter to perform overtime work to replace a missing warning sign for a temporary

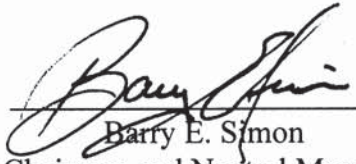
speed restriction at Mile Post QD 122.9. It is undisputed that Gunter is junior to Claimant as a Track Foreman. Consequently, the Organization argues Claimant should have been used to perform this service based upon his greater seniority.

The record before the Board establishes that Claimant was still on duty and being paid at the overtime rate at the time Gunter's service was required. The Carrier explains it was unknown at the time how much longer Claimant would be working that day. It further asserts safety considerations required that the warning sign be replaced as soon as possible. It was not practical for this work to wait until Claimant completed the duties he was already performing. In support of its position, the Carrier cites Third Division Award 39307, involving these parties and reading, in pertinent part, as follows:


Once the Carrier has proved that the Claimants were working elsewhere on overtime when the disputed emergency work was performed, the logical conclusion is that they could not have performed the track work at the derailment site at the same time. It therefore falls to the Organization to demonstrate that the Claimants were somehow available to perform the disputed work. The Organization failed to do so. Accordingly, the Board finds that the Carrier did not violate the Agreement by failing to call the Claimants to perform the disputed overtime service.

We find that Award 39307 is directly on point. Inasmuch as it involves the parties herein and the same Agreement, the doctrine of *stare decisis* dictates that we also hold in this case that Claimant was unavailable to perform this overtime work. The Organization's argument goes no further than an assertion that Claimant should have been used because he was the senior employee. It acknowledges that Claimant was still working at the time Gunter was called and does not establish that the Carrier would know for certain that Claimant would have been available to perform the work. The use of another qualified, but available, employee was not in violation of the Agreement, notwithstanding the fact he had less seniority than Claimant.


AWARD: Claim denied.



Barry E. Simon
Chairman and Neutral Member



Andrew Mulford
Employee Member



Rob Miller
Carrier Member

Dated: April 2, 2015
Arlington Heights, Illinois