

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7163**

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| Brotherhood of Maintenance of Way |) | |
| Employees Division, IBT Rail Conference |) | |
| |) | Case No. 167 |
| and |) | Award No. 167 |
| |) | |
| CSX Transportation, Inc. |) | |

Statement of Claim

"Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned Assistant Roadmaster L. Macarie to perform overtime track maintenance work (plug rail repair and replacement) on September 22, 2012 and failed to assign such work to Claimant R. Jeter (System File JETERC.112/2012-132633 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Jeter shall now be compensated ' ... (3) three hours at his appropriate time and one half rate of pay....' (Employees' Exhibit "A-1")."

Background

Claimant maintains seniority as a trackman on the Great Lakes Service Lane (GLSL), Cleveland Seniority District (CSD). He regularly performs track maintenance and repair duties such as plug rail repairs. Assistant Roadmaster (AR) Macarie, a supervisor, does not have seniority on the CSD.

The Organization alleges that on September 22, 2012 the Carrier assigned scope-covered work to the AR in violation of Rules 1, 3, 4 and 17. In this regard, BMWED states that the AR used hand tools to assist the craft with a plug rail replacement at Mile Post QDS 17.2 on the Cleveland Short Line, GLSL, CSD. Claimant was available, willing and ready to perform this overtime work but for the Carrier assigning it to the AR, a supervisor without seniority on GLSL, CSD.

Rule 17(a) states that "the senior employee in the required job class will be given preference for overtime work ordinarily and customarily performed by them." The rule shows that

Claimant was contractually entitled to perform the plug rail replacement work; this work is associated with his regularly assigned position as a trackman. Consistent with on-property Third Division Awards 33440 and 33623, the proper rate of pay for a contract violation is the rate the Claimant would have received but for the Carrier's violation. Thus, three (3) hours at the overtime rate is an appropriate remedy.

According to the Carrier, "the Claimant was working his eight (8) hour regular assignment and worked along with the [AR] performing the claimed work." Since Claimant was already performing his duties on this project he would not be entitled to a remedy; he endured no loss of work opportunity.

Findings

Public Law Board 7163, upon the whole record and all the evidence, finds that (1) the parties to this dispute are Carrier and Employees within the meaning of the Railway Labor Act as amended, (2) the Board has jurisdiction over this dispute and (3) the parties to this dispute were accorded due notice of the hearing and participated in this proceeding.

Having reviewed the evidentiary record established by the parties in this proceeding, including the arbitral precedent relied upon by each party, the Board finds that the claim was timely and properly presented and handled by the Organization at all stages of appeal up to and including the Carrier's highest appellate officer.

The Board finds, further, that the AR performed the claimed work. The claim denial states "Claimant was working his eight (8) hour regular assignment and worked along with Mr. Macarie performing the work claimed." The claimed work performed by the AR on the claim date is the kind of work ordinarily and customarily performed by the craft, including Claimant. The Carrier violated the Agreement.

As for a remedy, the Carrier asserts that Claimant was fully employed and endured no loss of work opportunity. As for the fully-employed defense, on-property Third Division Awards 32878 and 35335 have concluded that the defense is without merit and does not preclude compensation for Claimant at the overtime rate of pay. No circumstances are present in this claim warranting a deviation from the cited precedent.

Since the Organization met its burden of proof and established a violation of the Agreement as alleged in Part 1 of the claim and the Carrier's defenses to the requested remedy are predominantly non-responsive to the circumstances in this claim, the Board grants the remedy in Part 2.

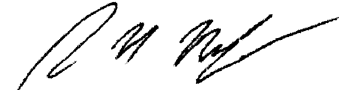
Award
Claim sustained.



Patrick J. Halter
Neutral Member



Rob Miller
Carrier Member



Andrew Mulford
Organization Member

Signed on this 26th day
of January, 2016