

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

Brotherhood of Maintenance of Way)	
Employees Division, IBT Rail Conference)	
)	Case No. 172
and)	Award No. 172
)	
CSX Transportation, Inc.)	

Statement of Claim

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier offered/assigned Track Inspector J. Garland to perform overtime machine operator duties near Mile Post Z 179 on the BR Subdivision on April 24, 2011 without calling and assigning such work to senior machine operator Claimant M. Hensley (Carrier’s File 2011-098799 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Hensley shall now be ‘... paid 6 hours at the applicable overtime rate of pay.’ (Employees’ Exhibit ‘A-1’).”

Background

Claimant maintains seniority as a machine operator in the Maintenance of Way Department. During the period of time relevant to this claim the Claimant performed machine operator duties on the Blue Ridge (BR) Subdivision, Appalachian Division.

On April 24, 2011 (Sunday), the Carrier required the services of a machine operator to assist with rail maintenance and repair near Mile Post Z 179 on the BR Subdivision. The Carrier assigned Track Inspector (TI) Garland to perform machine operator duties for six (6) hours of overtime. The Organization asserts that Claimant was the senior qualified machine operator on the seniority district and he ordinarily and customarily operates machines for rail lining work. Claimant would have performed the claimed work but for the Carrier assigning it to a junior employee. According to the Organization, the Carrier violated Claimant’s seniority rights and contract preference under Rule 17, Section 1, to be called for and assigned to overtime work without regard to whether or not the work is a continuation of the day’s work.

The Carrier asserts that all employees senior to TI Garland were called prior to the Carrier offering the overtime work to TI Garland. Specifically, the Roadmaster called the Claimant but was unable to connect with him about the overtime work. The Carrier relies on Award 153 of this Board to show that the Organization has not met its burden of proof establishing a violation of the Agreement.


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 afforded due notice of the hearing and participated in this proceeding.

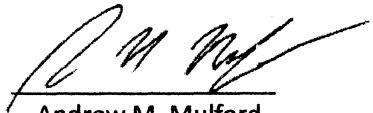
The record shows that the claim was timely and properly presented and handled by the Organization at all stages of appeal up to and including the Carrier's highest appellate officer.

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 Organization has not met its burden of proof to establish rules violations as alleged. The Roadmaster's undisputed statement is that he exhausted the call list and the only employee answering the call out was TI Garland. In view of that finding and following precedent in Award 153 of this Board, the claim is denied.

Award
Claim denied.


Patrick Halter
Neutral Member


Rob Miller
Carrier Member


Andrew M. Mulford
Organization Member

Signed on this 26th day
of January, 2016