

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

<b>Brotherhood of Maintenance of Way</b>	)	
<b>Employes Division, IBT Rail Conference</b>	)	
	)	<b>Case No. 176</b>
<b>and</b>	)	<b>Award No. 176</b>
	)	
<b>CSX Transportation, Inc.</b>	)	

Statement of Claim

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier called/assigned junior employe L. McGuire to perform overtime work on the Appalachian Division on August 24, 2012 without calling and assigning such work to senior employe Claimant B. Hendrickson (System File G35711212/2012-133056).
2. As a consequence of the violation referred to in Part 1 above, Claimant B. Hendrickson shall now ‘... be allowed ten (10) hours overtime at his respective overtime rate of pay.’ (Employes’ Exhibit ‘A-1’).”

Background

Claimant and Employee McGuire both maintain seniority as a B&B foreman and assistant foreman on the Appalachian Division. When considering each employees assistant foreman seniority, Employee McGuire is junior to Claimant.

According to the Organization, the Carrier determined that overtime service was required to assist and instruct an employee with flagging for a contractor. Claimant was the senior qualified assistant foreman on the seniority district and had notified supervisors of his interest in overtime work. Instead of assigning Claimant to assist and instruct the employee with flagging, the Carrier assigned Employee McGuire, junior to Claimant.

The Organization alleges violations of Rules 3, 4, 11 and 17. Claimant was entitled to the overtime work based on seniority and Rule 17 - Preference for Overtime Work, which “specifically stipulates that employees will be given preference for overtime work, for which they are qualified and available, on the basis of seniority.” In the Organization’s submission to the Board, it cites Rule 17, Section 1 - Non-mobile gangs, as requiring the Carrier to assign non-mobile overtime work (whether or not in continuation with a day’s work) to the most senior employee in the job class who ordinarily and customarily performs such work.

As for the Organization’s claimed work -- assisting and instructing another employee with flag duties -- that work was not performed. Employee McGuire, a Bridge Team Foreman, was working in the vicinity

of Florence, Kentucky, as a member of Gang 6C71. While the contractors working nearby installed a culvert, Employee McGuire performed his regular duties as foreman. During the time that Employee McGuire was performing his foreman duties, the Claimant's Gang 6C83 was in Corbin, Kentucky, several miles from the contractor and Employee McGuire. Since the work on August 24, 2012 (claim date) was work associated with Employee McGuire's gang, the overtime assignment fell to him as he had a connection to the work. By contrast, Claimant, a member of Gang 6C83, did not have a connection and preference to the overtime work. During conference the Carrier provided payroll records to the Organization to establish gang assignments and class on the claim date. Since the Organization did not meet its burden of proof, the claim must be denied.

#### 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.


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.

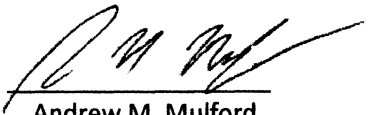
The Board finds, further, that during on-property exchanges and conference the focus of this claim was Rule 17, Section 2. The Organization argued on-property that "Rule 17 specifically stipulates that employees will be given preference for overtime work, for which they are qualified and available, on the basis of seniority." The Carrier argued on-property that Rule 17, Section 2 - Mobile gangs was followed as it states "the gang ordinarily doing this type of work during the regularly assigned work period would be given preference for the continuation of this work outside of the regularly assigned work period[.]" Since the on-property exchanges, conference discussion and post-conference letters addressed Section 2 the Board will assess this claim in that context.

Although the Organization alleges that the claimed work was assisting and instructing another employee with flag duties, the Carrier rebutted that allegation. "The work in question was not work as claimed by the Organization" as Employee McGuire was a foreman on a bridge team working on a bridge in the vicinity of Florence, Kentucky. On the claim date of August 24, 2012 Employee McGuire performed his regular duties that he customarily and ordinarily performed while the contractors installed a culvert near the foreman's location. In other words, the work performed on overtime by Employee McGuire arose from and in connection with his continuing duties as foreman and not from duties associated with flagging. The Board finds that Employee McGuire did not assist and instruct with flag duties as alleged. In view of the findings, the claim will be denied as the allegations of rules violations in the claim are not established by the evidence in this record.

Award  
Claim denied.

  
Patrick Halter  
Neutral Member

  
Rob Miller  
Carrier Member

  
Andrew M. Mulford  
Organization Member

Signed on this 26th day  
of January, 2016