

AWARD NO. 187
Case No. 187

Organization File No. HellerC.113
Carrier File No. 2013-139407

PUBLIC LAW BOARD NO. 7163

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION,
) INTERNATIONAL BROTHERHOOD OF TEAMSTERS
TO)
)
DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. The Agreement was violated when it failed to call and assign Claimant D. Heller to perform System Rail Train Operator work at Mile Post SVC 862.2 on the Brewster Subdivision on February 1, 2013 and instead assigned junior employee R. Roberts thereto.
2. As a consequence of the violation referred to in Part 1 above, Claimant D. Heller shall now be compensated for all hours, compensation and benefits earned by junior employee R. Roberts.

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.

On the date of claim, both Claimant and R. Roberts were assigned to System Gang 6XRT as Rail Train Operators. It is undisputed that Claimant is senior to Roberts in the System Rail Train Operator classification. On that date, overtime service was required in the vicinity of MP SVC 862.2 on the Brewster Subdivision and the Carrier utilized Roberts for this service. The applicable Rules

in this case are Rule 17, Section 2 of the System Agreement and Section 7.B. of the parties System Production Gang Agreement. They provide as follows:

Rule 17 - Preference for Overtime Work

Section 2 - Mobile gangs:

When the work involved is of a specialized nature, such as production work, rail laying, tie installation, surface, etc., 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 with employees in the gang being called in the order of their seniority, in the required job class. If other employees are needed to assist in the work, other production gang employees within the seniority district will be offered/ called in the order of their seniority, in the required job class.

Section 7 - Overtime

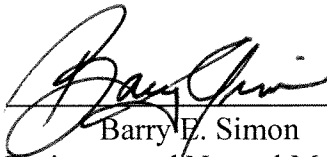
- B. The right to work overtime, when required on System Gangs, will accrue first to the incumbent of the position of which the overtime is required. If declined by the incumbent, overtime will be performed by the senior qualified employee in the System Gang indicating a desire to work overtime. If no employee desires to work overtime and overtime is required, the junior qualified employee in the System Gang involved will work the overtime.

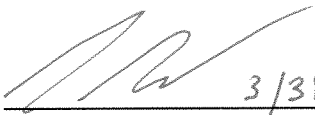
The Carrier has argued that, while Claimant was assigned to the same gang, it was on Roberts' rail train that the overtime work was required. This, says the Carrier, made Roberts the correct employee to perform the work as he was the incumbent of the position working overtime. The Organization, on the other hand, argues that neither employee was the incumbent of the specific position working overtime because neither was assigned to any specific machine. Furthermore, the Organization claims there is an established practice of assigning overtime to the senior employee.


The term "incumbent" is a term of art in labor relations. It refers to an employee who, generally through the exercise of seniority, is assigned to a specific position. Furthermore, the term "position" refers to a unique assignment for a single employee. It is distinguished from the term "job," which refers to a group of similar positions. In the case at bar, there is no evidence that either

Claimant or Roberts had bid into a specific position. Accordingly, we cannot find that either was the incumbent who would be given preference under Section 7.B of the System Production Gang Agreement. Therefore, Rule 17, Section 2 becomes the Rule governing the assignment of overtime. As Claimant was the senior of the two employees, he should have been offered the opportunity to work. The Carrier violated the Agreement when it failed to do so, and Claimant is entitled to the overtime compensation he would have earned.

AWARD: Claim sustained. Carrier is directed to comply with this Award within 45 days.


Barry E. Simon
Chairman and Neutral Member


3/31/16
Andrew Mulford
Employee Member


Rob Miller
Carrier Member

Dated: February 23, 2016
Arlington Heights, Illinois