

AWARD NO. 201
Case No. 201

Organization File No. S21703513
Carrier File No. 2013-141907

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, beginning January 14, 2013 and continuing through March 12, 2013, the Carrier assigned junior employee C. Chestnut to perform overtime trackman duties on SPG 5XT9 rather than assigning Claimant M. Cameron thereto.
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Cameron shall be allowed all overtime hours made by Mr. C. Chestnut beginning on January 14, 2013 to and including March 12, 2013.

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.

The Organization asserts, and the Carrier does not deny, that between January 14 and March 12, 2013, Machine Operator C. Chestnut was assigned overtime work on Surface Production Gang (SPG) 5XT9 despite the fact that he was junior in seniority to Claimant. The work was not offered to Claimant, according to the Carrier, because it involved the operation of a motor vehicle

that U. S. Department of Transportation regulations require the operator to possess a valid DOT Health Card. It is undisputed that Claimant did not possess this credential.

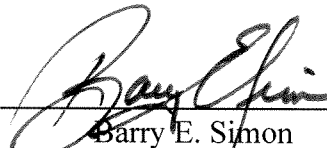
The Organization does, however, dispute the Carrier's contention that Chestnut was used to operate a vehicle. Instead, it asserts he performed trackman duties that Claimant was qualified to perform. It asked the Carrier to provide documentation to show the work performed by Chestnut. No documentation, other than an email from the T9 Tie Team manager wherein he alleged Chestnut was used as a vehicle operator, was produced by the Carrier.

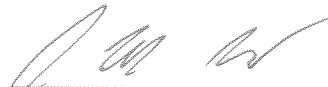
On the one hand, the Carrier argues the Organization bears the burden of proof and has not met that burden by showing that Chestnut, in fact, performed trackman duties. On the other hand, the Organization insists the Carrier would have records that would have shown what work was performed by Chestnut. It argues that the Carrier's failure to produce such records suggests they would not support the Carrier's position. The Organization asks the Board to draw an adverse inference against the Carrier due to its failure to provide the records.


Had the Carrier documented its assertion during the handling of the claim on the property, it is unlikely this claim would have ever reached this Board. Instead, the parties and the taxpayers are required to incur costs in an attempt to resolve their dispute. The Board finds that the only reasonable resolution is to remand this claim to the parties for further consideration. If the Carrier is unable to document that Chestnut operated a vehicle, the claim should be allowed as presented, inasmuch as that was the Carrier's only defense to the claim. If, on the other hand, Chestnut did operate a vehicle, the Organization should properly withdraw the claim. In resolving the claim, the Board directs the parties to give consideration to Award No. 82 of this Board, which cited Third

Division Award No. 37951 as recognizing that the Carrier may require a commercial driver's license for a position "as long as there is a rational basis for doing so and it is reasonably related to the duties of the position." Thus, it would not be necessary for Chestnut to have operated the vehicle every day, but there must be some degree of regularity to his driving in order for the Carrier to prevail in its defense of the claim.

AWARD: Claim remanded in accordance with the above Findings.


Barry E. Simon
Chairman and Neutral Member


Andrew Mulford
Employee Member


Rob Miller
Carrier Member

Dated: January 27, 2016
Arlington Heights, Illinois