AWARD NO. 210
Case No. 210

Organization File No. B11156112
Carrier File No. 2012-135523

PUBLIC LAW BOARD NO. 7163

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

STATEMENT OF CLAIM:

1. The Agreement was violated when, on October 20 and 21, 2012, the Carrier offered preference to and assigned Bridge and Building (B&B) Department Assistant Foreman S. Bruch to work and perform bridge tender work at the Mobile River Draw Bridge on the Atlanta Seniority District.

2. As a consequence of the violation referred to in Part 1 above, Claimant W. Dreadin shall now be compensated for twelve (12) hours' overtime at his respective rate of pay.

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 facts in this case are not in dispute. Claimant holds seniority as a B&B Bridge Mechanic and B&B Bridge Tender. On October 20 and 21, 2012, the Carrier required that overtime work be performed at the Mobile River Draw Bridge. For this service, the Carrier assigned B&B Bridge Tender S. Bruch. Claimant, who is senior to Bridge Tender Bruch, was not called for this work.

Consequently, the instant claim was filed, asserting that Claimant should have been called based upon his greater seniority.

The Carrier explains that Claimant was not called to fill this temporary vacancy because he had been on vacation from October 15 through 18, and his regular work week had not yet begun. It argues, therefore, that he was not subject to call on the rest days following his vacation. In support of its position, the Carrier cites Third Division Award 23198, holding:

> In Award 10869, Carrier asserted that historically, when an employe goes on vacation, he has no rights to return to service until the first work day on which he is scheduled to return to work. It is virtually an identical case to the one before us. Contrary to Claimant's position that Third Division Award 6599, which is factually distinguishable, is persuasive, we find that there is no Agreement support or institutionalized practice that affirms his position. Awards 10869 and 18295 are directly on the point with the facts herein and we are constrained by these precedents to deny the claim. Based on these holdings, Claimant was not entitled to work on August 12, 1978, the rest day, following the end of his scheduled vacation.

This principle was upheld by the Third Division in Award 27616. In Award 40830, the Third Division recognized this principle, but made an exception where the vacationing employee had informed the Carrier that he would be available for call. In his dissent to that Award, Labor Member Kelly Haley wrote:

> This Award is wrong in that it ignores a long line of precedent, which effectively states that when an employee goes on vacation, the employee is not entitled to return to service until the first workday the employee is scheduled to return to work. (See Third Division Awards 10869, 23198, 27616, and numerous others.)
>
> All three of the above-cited Awards use virtually identical language which states: "... *when an employee goes on vacation, he has no rights to return to service until the first work day on which he is scheduled to return to work.*" [emphasis in original]

The Organization has not persuaded this Board that the principle is erroneous. Accordingly, because Claimant was observing the rest days following his vacation, he was not considered

available to perform this service. The Carrier's decision not to call him for the vacancy was not in violation of the Agreement.

AWARD: Claim denied.

Barry E. Simon
Chairman and Neutral Member

Andrew Mulford
Employee Member

Rob Miller
Carrier Member

Dated: 10/19/16
Arlington Heights, Illinois