

AWARD NO. 217
Case No. 217

Organization File No. A02803913
Carrier File No. 2013-141636

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, on March 1 and 3, 2013, the Carrier assigned junior employee J. Duvall to perform overtime welding duties near Mile Post QP 28.7 on the Baltimore East End Seniority District.
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Fink shall now be compensated for twenty-one (21) hours at his appropriate time and one-half 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.

On March 1 and 3, 2013, the Carrier required that welding work be performed on overtime on the Baltimore Service Lane Work Territory. Welder J. Duvall was called to perform this work, although Claimant is senior to him as a welder. The Carrier acknowledges that Claimant would have been used for this work but for the fact that he had declined it. It says Division Engineer Roger

Taylor had offered Claimant the opportunity to work this overtime. In an email dated September 25, 2013, Taylor explained,

Mr. Fink was offered the OT on the Thursday of Feb 28, 2013 he stated he had to watch his kids the same as most Fridays but sometimes he can work some Sundays I offered him the OT and he turned it down.

The Organization has presented an April 4, 2014 handwritten letter from Claimant, stating,

First, I do not always refuse overtime and/or weekend work. This particular week I called Asst. Division Engineer Roger Taylor to ask to work the upcoming weekend anywhere within our territory. He said that there was NO overtime this particular weekend. Therefore I was not offered this overtime.

Second, this work was overtime, contrary to what the carrier claims. This work was performed on March 1 and 2 of 2013, which were a Friday and Saturday. Both myself and Mr. Duvall were working SLWT welding jobs on different gangs with Mr. Duvall being the junior.

Finally, this work was performed on a territory that both Mr. Duvall and myself regularly work on during a regular work week.

I was never offered to work this overtime and when I called, I was denied to work any overtime that weekend anywhere.


The email from Division Engineer Taylor and Claimant's letter present an irreconcilable conflict in facts. Either Claimant was offered the work and turned it down, or Claimant requested overtime work and was told there was none. Because of the appellate nature of arbitration in this industry, it is impossible for this Board to make any determinations of credibility in this case. There is a long history of decisions where arbitral panels have been faced with just such a dilemma. In Third Division Award 35496, for example, Referee Edwin H. Benn wrote:

According to the Carrier, Personnel Specialist G. Hugo contends that he called the Claimant to fill a vacancy on the Glenwood Section from March 11, 1996 until April 3, 1996; no one answered the phone; no answering machine picked up the call; and Hugo then moved down the call list. The Claimant states that he called Hugo on March 8, 1996 and every week thereafter and was told there was no work for him; he does have an answering machine; and his wife is at home during the day.


Thus, the Organization contends that the Claimant was not called while the Carrier contends that the Claimant was called. At best, this record demonstrates disputed issues of material fact. Based on the record before us, the Board has no basis to resolve those facts in either party's favor. However, because the burden is ultimately on the Organization to demonstrate the facts to support the asserted violation of the Agreement, this claim must fail.

For the same reasons expressed in Third Division Award 35496, and many others, we must find that the Organization has failed to prove a 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