

AWARD NO. 323
Case No. 323

Organization File No. H40410216
Carrier File No. 2016-211900

PUBLIC LAW BOARD NO. 7163

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

STATEMENT OF CLAIM:

1. The Agreement was violated when, on September 18, 2016, the Carrier assigned junior mobile production forces to perform scheduled non-mobile overtime service (diamond installation project) at Mile Post BIH 21.0 on the B&OCT Seniority District (System File H40410216/2016-211900 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimants J. Krzan, Z. Lotz, M. O'Reilly and G. Ontiveros shall now be '... compensated for sixteen (16) hours of overtime and two (2) hours of double time, each, at their respective rates of pay. Also, that all time be credited towards vacation, holiday and retirement purposes. ***' (Employees' Exhibit 'A-1')."

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, the Carrier used employees assigned to a mobile Large-Scale Switch Tie Installation Gang to perform work installing a diamond on the B&OCT Seniority District. This

claim was filed on behalf of Section Gang employees on the B&OCT Seniority District, asserting that they should have been used to perform this work.

The Carrier has denied the claim on the basis that the crew that performed the work was a mobile Service Lane Work Territory (SLWT) crew which can perform any work covered by the scope of the Agreement. It relies upon the "Strongsville Agreement," containing such an authorization. It also cites Rule 17, Section 2 of the Agreement, which governs preference for overtime and states:

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 the regularly assigned work period with the 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.

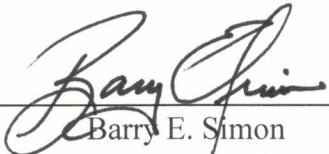
In reviewing the record before us, the Board notes that the Carrier had assigned the work of installing this diamond to Claimants, but had to cancel the project due to the unavailability of cranes. We also note that the SLWT gang had not performed work on this diamond prior to the date of claim. On this basis, we conclude that this is work that could have been assigned to Claimants, and was not work that was reserved to the SLWT gang.

We find the Carrier's interpretation of the "Strongsville Agreement" to be overly broad. While it states, "Such gangs consisting of any number of employees may perform any work covered by the scope of the new Maintenance of Way Agreement . . .," it goes on to say, "On the other hand the establishment of SLWT gangs will not be used as a device to eliminate basic maintenance forces (See Side Letter)." Our interpretation of the Agreement, therefore, is that the SLWT gangs may

perform any type of maintenance of way work, but not the work belonging to other maintenance of way employees. In other words, the agreement that the gangs may perform any work relates only to the nature of the work performed. And when the work is performed on overtime, they would have preference to it only if they had been doing the work during the regularly assigned work period. The Organization does not dispute that had the mobile gang been working on the diamond prior to the date of claim, they could have performed the work at overtime on the date of claim.

Because this was work that had earlier been earmarked for Claimants, we find, in this case, that it would ordinarily and customarily be performed by them. Accordingly, we find that Claimants had a right to be called for this overtime work in preference to the SLWT gang. The Carrier violated the Agreement when it did not call them. Claimants are entitled to the earnings they would have received had they performed the work.


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



Barry E. Simon
Chairman and Neutral Member



Andrew Mulford
Employee Member



Katrina Donovan
Carrier Member

Dated: 02/13/19
Arlington Heights, Illinois