

**PUBLIC LAW BOARD NO. 7163
CASE No. 343**

**BMW FILE No. T22705816
LCAT No. 2016-209584**

Brotherhood of Maintenance of Way Employees Division)	
Of the International Brotherhood of Teamsters)	
)	
Vs.)	Parties to Dispute
)	
CSX Transportation, Inc.)	

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement when, commencing on August 2, 2016 and continuing, the Carrier assigned overtime preference to Crane Operator J. Chambless and Welder Helper T. Polite for overtime rail unloading duties at the Nashville Rail Welding Plant, Nashville, TN, on the Nashville Division (System File T22705816/2016-209584 CSX).**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant A. Crockett shall ‘... be paid all hours worked by the Crane Operator and Welder Helper (ground man), beginning on August 2, 2016, and continuing until the violation stops, at his respective overtime rate of pay.’ (Employees’ Exhibit ‘A-1’).”**

FINDINGS:

The Board, upon the whole record and all the evidence, finds that the carrier or carriers and the Employee or Employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934. The Board has jurisdiction over the dispute involved herein. The Parties to said dispute were given due notice of hearing thereon.

The Claimant is regularly assigned as a Welding Plant Foreman at the Carrier’s Nashville Rail Welding Plant. The Organization alleges that the Carrier offered preference to and assigned to the employees claimed against overtime work of unloading rail from rail trains at the Nashville Rail Welding Plant. A statement from the Plant Manager indicated that unloading a rail train only requires one crane operator and one ground man. The foreman is not needed to perform this work

during the regularly assigned day, nor is one needed for overtime in continuation of the day's work or from call out. The employees claimed against ordinarily and customarily performed the work of unloading a rail train.

On August 5, 2016, the Organization filed this claim on behalf of the Claimant. By letter dated October 4, 2016, the Carrier denied the claim. The Organization requested the appeal to be listed for conference by letter dated December 11, 2016. After said conference on August 22, 2017, the Carrier denied the appeal on October 22, 2017, and the Organization responded on February 15, 2018. After on property handling between the parties, the case was mutually listed on PLB 7163 for review.

The Board has reviewed the record developed by the parties during their handling of the claim on the property, and considered evidence related to the following to make its determination of this claim:

- 1) Did the Claimant establish by substantial evidence that the Carrier violated the controlling agreement?
- 2) If so, what should the remedy be in the case?

PERTINENT PROVISIONS OF THE AGREEMENT

Rules 1, 3, 4, 17 and Appendix F and the Memorandum of Agreement

POSITION OF ORGANIZATION:

- 1) The Organization contends that the Carrier failed to comply with Rule 17 and its requirement that overtime opportunities be assigned on the basis of seniority. The Claimant is a welding plant foreman, and is responsible for overseeing work related to rail unloading during straight and overtime hours and serving as the EIC. The Claimant was the senior qualified bidder for this work.
- 2) The Organization further contends that regardless of whether or not rail unloading work at the facility only requires a crane operator and ground man, the work was overseen by a foreman during straight time hours and should have been overseen by a foreman during overtime hours.
- 3) The Organization contends that the requested remedy is essential so as to correct the Carrier's improper conduct and protect the integrity of the

Agreement. The Carrier violated Rules 1, 3, 4, 17 and Appendix F and the Memorandum of Agreement when the Foreman was not assigned to direct employees on overtime.

- 4) It is the position of the Organization that the claim be sustained as submitted.

POSITION OF CARRIER:

- 1) The Carrier contends that the Organization failed to present evidence showing a violation of any Rule or Agreement. The crane operator and ground man were employees to be given preference for overtime under the Language of Rule 17. In addition, the Carrier asserts that the language of Rule 17 or other aforementioned rules do not require the Carrier to utilize a foreman where the duties of a foreman were neither required nor performed.
- 2) The Carrier further contends that the work in question, unloading a rail from rail trains at the Nashville Welding Plant, requires one crane operator and one ground man. As the employees in the required class who ordinarily and customarily perform the work, the crane operator and ground man were the employees properly given preference to the overtime according to Rule 17.
- 3) Moreover, the Carrier contends that Rule 3: Selection of Positions addresses that award of bulletin positions and temporary assignment which is not applicable to this claim. Rule 1: Seniority addresses primary duties of classes within the craft. The purpose of Rule 1 does not function to reserve duties to the craft. Therefore Rule 1 is not applicable to the claim.
- 4) The Carrier lastly argues that Appendix F is not applicable to this claim. Appendix F does not function to reserve duties to the craft. It simply sets forth that the plant work force will consist of a foreman position. There was no evidence that the plant was in operation on the shift in question, and the plant is not required to be in operation for this work to take place. The language of Appendix F does not require the Carrier to assign a foreman where the duties of the foreman were not required nor performed. As supervision was not required, the Carrier did not violate Rule 17 when it did not assign the Claimant for the overtime work.
- 5) It is the position of the Carrier that the Organization has failed to meet its burden of proof.

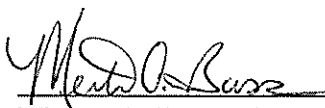
The Board has carefully reviewed the record inclusive of the applicable rules and established facts and finds that the Carrier failed to meet its burden of proof that a violation occurred. The Board thus finds that the Carrier did not violate the Agreement as alleged.

AWARD


Claim denied.

ORDER

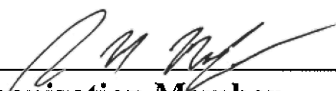
This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant not be made.



Meeta A. Bass, Neutral Member



Carrier Member
Dated: 5/21/19



Organization Member
Dated 5/21/19