

AWARD NO. 366
Case No. 366

Organization File No. I57708116
Carrier File No. 2016-214019

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: "Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when, on November 14 and 15, 2016, the Carrier assigned Welder S. Carman to perform trackman work (installing ties, cribbing tracks and installing rail) between Mile Posts 192 and 194.5 (A Yard) in Nashville, Tennessee on the Nashville Division instead of calling and assigning Track Inspector M. Anderson (System File I57708116/2016-214019 CSX).
2. The claim* as presented by Vice Chairman A. Shelton to Division Engineer J. Fortune shall be allowed as presented because said claim was not disallowed in accordance with Rule 24(a).
3. As a consequence of the violations referred to in Parts 1 and/or 2 above, Claimant M. Anderson shall be compensated for twenty-five (25) hours at his respective overtime rate of pay.

*The initial letter of claim will be reproduced within our initial submission."

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.

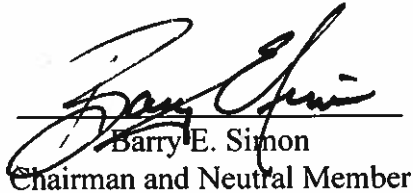
The Organization first argues the claim should be allowed because it was not properly denied by the Carrier within the applicable time limit. It is undisputed that a denial was issued within the sixty-day time limit, but that it was denied by email, rather than through the Postal Service. We find that the Agreement only requires the Carrier to render a decision on a claim in writing. It does not specify the form of that writing. To be sure, the Agreement notes that the postmark will govern in determining compliance with time limits *when the U.S. Mail is used*. This implies that other means of transmitting a decision are acceptable. Furthermore, in Award No. 43478, involving these parties, the Third Division implied that an email confirmation or a fax receipt might have satisfied the burden of proof that a timely denial of the claim had been sent to the Organization. We find, in this case, that the Carrier properly denied the claim in a timely manner.

With regard to the merits, the Organization contends the Carrier used a Welder to perform Trackman work on an overtime basis on November 14 and 15, 2016. It says Claimant was assigned as a Trackman on these dates, was available to perform this work, and has greater seniority in the Trackman class than the employee used by the Carrier.

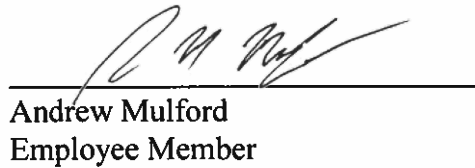
The Carrier, on the other hand, states that Claimant was assigned as a Track Inspector on those dates and was observing his rest days. The other employee, S. Carman, had been assigned to a Welder position by bid, but had not yet been released from his Track Foreman position. It avers that he performed the duties of that position on the assigned workdays of that position.

Upon our review of the record, we find that the Organization has not met its burden of proof to show that the work could not be performed by Mr. Carman as a continuation of his regular assignment in accordance with the Agreement. There is no evidence that a vacancy existed for which Claimant should have been called. We cannot find that the Agreement was violated.

AWARD: Claim denied.



Barry E. Simon
Chairman and Neutral Member



Andrew Mulford
Employee Member



Katrina Donovan
Carrier Member

Dated: 07/15/19
Arlington Heights, Illinois