

AWARD NO. 459

Case No. 459

Carrier File: 18-98535

BMWE File No.: L62191018

PUBLIC LAW BOARD NO. 7163

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,
) IBT RAIL CONFERENCE
TO)
)
DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when, on May 28, 29, 30, 31, 2018, June 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28 and 29, 2018, July 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, 2018 and continuing, the Carrier assigned junior Floating Team 5LY5 employees A. Sexton and S. Ferrell to perform overtime track surfacing work behind a contractor that was undercutting track in the vicinity of Smith Grove, Kentucky, Mile Post 101.0 (System File L62191018/18-98535 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimants L. Lynn (sic) and J. McCoy shall now be ' ... allowed **three hundred forty six (346) hours overtime**, and continuing until the violation stops . . . "

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 underlying facts of this case are not in dispute. Claimants, L. Lester and J. McCoy were, at the relevant time, regularly assigned to operator positions on basic Force Team 5L89 on the Cincinnati Seniority District of the Louisville Division headquartered at Bowling Green,

Kentucky. The Organization contends that as part of their basic force team assignments, they were responsible for performing track surfacing work on both straight time and overtime.

Sometime prior to the dates listed in the claim, the Carrier had assigned Claimants to assist in repairs following a derailment. The Carrier then assigned Service Lane Work Territory team (SLWT) employees A. Sexton and S. Ferrell to perform regular track surfacing work behind a contractor which was undercutting track in the vicinity of Smith Grove, Kentucky, Mile Post 101.0. When the overtime necessity arose, the Carrier assigned the work to the SLWT employees, leading to the instant claim, as Claimants had superior seniority to the SLWT employees.

Claimant Lester provided a statement that his gang was initially working with the undercutter, surfacing track, prior to being forced by Roadmaster J. Jarrett to surface track at the derailment site, with the caveat that Claimants' gang would be allowed to return to work behind the undercutter.

Carrier manager Jamie McCleese stated, in an email dated May 13, 2019:

When I came to this location (of the instant dispute) last year the SLWT team was already tamping with the undercutter. It is a system undercutter and the SLWT team has rights on this sub as well as the claimant . . . The headquartered surfacing team was working a derailment . . . at the time. Also when the derailment occurred they were the closest surfacing team and we had to protect the undercutter, so we brought the SLWT floating force down from Louisville.

Senior Manager Labor Relations Eric Caruth also stated, in an email to Jamie McCleese, that it was his understanding that Claimants had performed undercutting work in support of a BMW operated machine whereas the mobile team operators had been assigned to the System undercutter.

The Organization states it is undisputed that Claimants were the headquartered senior operators on the territory where the subject work took place. The Organization asserts that Claimants were entitled to the overtime by virtue of their superior seniority and Rule 17 of the parties' agreement.

The Organization maintains that the assignment at issue was non-mobile, so the following provision of Rule 17 governs:

Section 1 – Non-mobile gangs

- (a) When work is to be performed outside the normal tour of duty in continuation of the day's work, the senior employee in the required job class will be given preference for overtime work ordinarily and customarily performed by them. When work is to be performed outside the normal tour of duty that is not a

continuation of the day's work, the senior employee in the required job class will be given preference for overtime work ordinarily and customarily performed by them.

The Organization argues that this language requires that the Carrier assign overtime opportunities, whether in continuation of the day's work or not, to the most senior employee(s) in the job class, here Claimants. It states that Claimants customarily and ordinarily performed work of the type at issue as part of their regular assignment, and therefore had preference to the overtime work.

The Carrier replies that Mr. Sexton and Mr. Ferrell were assigned to a Service Lane Work Territory team (SLWT) team, a mobile team as defined under Rule 17. At the relevant time, the Carrier states, it is undisputed that Claimants were performing work following a derailment at another location.

The Carrier maintains that notwithstanding the Organization's contention that Claimants were entitled to the overtime because they were senior and regularly performed the sort of work at issue, the "Strongville Agreement," governs this situation and requires that the claim be denied.

Section 4(a) of that Agreement provides:

Twelve (12) new "Service Lane Work Territories" ("SLWTs") are hereby established for "floating; i.e. other than point headquartered" Track and Bridge and Facility positions falling into the category between System Production Gang work and basic point headquartered maintenance work; e.g., an AFE gang that would perform work over multiple seniority districts. Such gangs consisting of any number of employees may perform any work covered by the scope of the new Maintenance of Way Agreement and may be established effective on "split date."

The Carrier argues that under the plain language of this Agreement the Carrier can assign SLWT teams any scope-covered work, and therefore the Carrier was able to assign the SLWT team employees to perform the instant surfacing work behind the undercutter. As a result, the Carrier urges, pursuant to the relevant language of Section 17, the SLWT team was then entitled to continue the work on overtime. That language provides:

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 of the regularly assigned work period with the employees in the gang being called in the order of their seniority, in 4 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.

The Organization concludes that the Carrier provided no evidence that the Strongville Agreement applied here, and although it argued this point on the property, Carrier officials maintained only that Claimants never supported the undercutter, a point definitively rebutted by Claimant Lester's statement. The Organization maintains that Rule 17 provides two different overtime rules for the two different types of forces, and Claimants, members of a non-mobile gang, had a clear right to the overtime work at issue. Therefore, it urges, the claim should be sustained.

We have carefully reviewed the record in its entirety. Whatever the significance of the Strongville Agreement, the record demonstrates that, at best, Claimants ceased performing the surfacing work behind the undercutter months before the instant claim arose, when they were sent to work a derailment. As the Carrier points out, there is no evidence that the Organization protested the assignment to the SLWT team until the overtime opportunities arose.

The Board is faced here with two competing provisions of Rule 17. Section 1 requires that for non-mobile gangs, the senior employees who ordinarily and customarily perform the type of work at issue are entitled to the overtime. The Organization argues that this language must prevail over Section 2, which requires that for *mobile* gangs, the employees for whom overtime is a continuation of the day's work are entitled to the overtime. The Organization has not proven, as it argues, that Section 1 must govern.

At the time the overtime arose, it was the SLWT employees who were performing the primary work, and no one had disputed their right to do so. The Organization has the burden of proving that the Section 2 guarantee of continuation overtime to mobile gangs did not apply, and it has not done so.

On the contrary, the limited arbitral authority on this point supports the Carrier. See Award No. 115 of this Board, which cites Award No. 15 of this Board for the proposition that a mobile gang employee performing work during his regularly assigned work period is properly preferred for overtime time over a senior non-mobile gang employee. See also Award No. 158 of this Board, which held that if the overtime work in question would have been done by the mobile gang had it been performed on the scheduled days of their assignment, Section 2 of Rule 17 governed and the senior non-mobile gang employee did not have a right to the overtime work.

We also note that the record demonstrates Claimants were working during the time of the overtime in question and, therefore, not available to do the work. The Organization has not met its burden of proving that Claimants were nevertheless entitled to the work. For all of these reasons, the claim will be denied.

AWARD: Claim denied.



Jacalyn J. Zimmerman
Neutral Member



Ross Glorioso
Organization Member



John Nilon
Carrier Member

Dated: 8/16/2022