

AWARD NO. 464
Case No. 464

Carrier File No. 19-30690
BMWE File: F39706718

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 November 3, 2018, the Carrier assigned junior employee and Welder S. Brunty to perform overtime work changing/replacing Sperry defects on the Rupert Subdivision between Mile Posts CAH 0.0 and 6.9 in Rupert, West Virginia on the Florence Division (System File F39706718/19-30690 CSX).
2. As a consequence of the violation referred to in Part 1 above Claimant S. French shall now be compensated for ‘. . . nine (9) hours overtime, at his respective rate of overtime 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.

At the time of the instant dispute Claimant, S. French, had a Trackman seniority date of August 7, 2006. It is undisputed that on November 3, 2018, the Carrier assigned rest day overtime work to employee S. Brunty, a welder, who was junior to Claimant in seniority.

The Organization states that the work at issue consisted of changing/repairing Sperry defects, which it asserts was track repair work. The Organization maintains that this work should have been assigned to Claimant, who regularly performed such duties. The Carrier responds that the work at issue was welding, properly performed by Mr. Brunty, a welder.

The parties agree that Rule 17 of their Agreement governs the resolution of this matter. It provides:

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.
- (b) If additional employees are needed to assist in the work, other employees located within the seniority district will be offered/called in the order of their seniority, in the required job class.

It is undisputed that Claimant, at the relevant time, had greater seniority than Mr. Brunty. Therefore, the question becomes the nature of the work performed, and which employee "ordinarily and customarily" performed such work. Contrary to the Carrier's contention that the work was welding, the type of work performed by Mr. Brunty, a welder, the Organization contends that Mr. Brunty in fact performed no welding on the date at issue.

The Carrier presented two emails from the manager in charge of the disputed work. He explained in detail that due to cold temperatures, welders were needed to use the rail puller to adjust installation of new rail to proper rail neutral temperature, to cut scrap rail as it came out of the track for cleanup, to use hydraulics to assist in the installation of rail, and, time permitting, make welds. The manager stated that welders have rail pullers on their trucks and are trained in the proper use and safe practices of pulling rail with a rail puller. The Organization presented a

statement signed by two employees, stating that they had worked with Mr. Brunty at the time at issue, "replacing rail due to sperry test car finding defects."

The Organization has the burden of proving the asserted contract violation. The Carrier manager detailed the specific welding work required, work which would not ordinarily and customarily be performed by a non-welder. The Organization presented a general statement signed by two employees, which lacked detail as to the specific work performed. In addition, they did not deny that welding work occurred.

The Organization has failed to meet its burden of proving that the overtime at issue involved the type of work properly claimable by Claimant. Therefore, 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