

PUBLIC LAW BOARD NO. 7163

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES
DIVISION - IBT RAIL CONFERENCE**

vs.

CSX TRANSPORTATION, INC.

**Case No. 470
Award No. 470
Organization No. ATL804619
Carrier No. 19-44605**

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when, on March 15, 2019, the Carrier assigned junior employee and Machine Operator J. Davis to perform overtime work utilizing a hy-rail truck to dump rock between Mile Posts SG 567.6 and SG 569.9 instead of Atlanta/Waycross Seniority District employee D. Morgan (System File ATL804619/19-44605 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant D. Morgan shall now be compensated for ‘... eleven (11.0) hours of overtime and 0 hours of double-time at the proper rate of pay and that all time be credited towards vacation and retirement ***’ (Employees’ Exhibit ‘A-1’).”

JURISDICTION

The Board upon consideration of the entire record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over this dispute; that the parties were given due notice of hearing.

FINDINGS

The Claimant referenced above has established and holds seniority in the Maintenance of Way Department. The central rules at issue in this claim are Rules 3, 4, 11, 16 and 17 of the Agreement between the parties effective June 1, 1999. Rule 3 governs the selection of positions and Rule 4 sets forth how

seniority is determined. Rule 11 sets forth the agreement with respect to overtime pay and procedures. Rule 16 provides the procedures when an employee is called to perform services outside of and not continuous with regularly assigned working hours. Finally, Rule 17 governs the preference for overtime work assignments.

At issue is whether the Carrier violated the Agreement when on March 15, 2019, it assigned overtime work to employee J. Davis who was junior to Claimant to perform duties utilizing a hy-rail truck to dump rock between Mile Posts SG 567.6 and SG 569.9 on the Atlanta/Waycross Seniority District.

By letter dated May 13, 2019, the Organization filed a timely claim on behalf of the Claimant contesting the work assignment. The Carrier denied the claim relying on an email statement provided by Roadmaster Jeremy Rice confirming that the work took place, but that Claimant turned it down when the assignment was offered. In response to the Carrier's declination, the Organization provided a statement signed by three (3) of Claimant's crew members refuting Rice's statement. Specifically, they stated that, "Road manager Rice's claim that Dennis Morgan's claim on Josh Davis was offered and he refused, is false. We SA12 worked that particular area for 2 days straight and no one from SA12 was ever offered to operate the dump truck."¹ Roadmaster Jeremy Rice provided a statement that the work was offered to Claimant and his team. However, Claimant turned the job down "because he did not want to get track time...." Carrier Exhibit B at 4. Consequently, the work was offered to Davis who accepted the task. Thereafter, the claim was properly handled by the Parties at all stages of the appeal up to and including the Carrier's highest appellate officer. The matter was not resolved and is now before this Board for resolution.

In reaching its decision, the Board has considered the record evidence and arguments of the parties, whether specifically addressed herein or not. As the moving party, it was the Organization's responsibility to meet its burden to prove by a preponderance of evidence that the Carrier committed the alleged violation(s). After careful review of the record, the Board finds the Organization has met its burden.

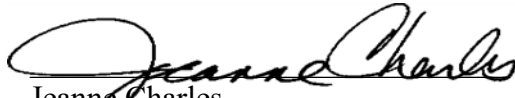
The record establishes that the work at issue was performed by J. Davis who is less senior than Claimant. While Roadmaster Rice asserts that Claimant "as well as the rest of his team" turned the job down, the statement of three (3) of those team members claimed the opposite. On balance, the evidence in

¹ Carrier Exhibit B at 7.


support of the violation outweighs Roadmaster Rice's uncorroborated statement. Accordingly, the Board will sustain the claim.

AWARD


Claim sustained. The Carrier is directed to comply with this Award on or before thirty (30) days following the Award date below.



Jeanne Charles
Chairman and Neutral Member



John Nilon
Carrier Member



Ross Glorioso
Labor Member

Dated: 1/18/2022