

AWARD NO. 504
Case No. 504

Carrier File: 19-41748
BMWE File: NAS701219

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 February 3 and 4, 2019, the Carrier offered preference to and assigned junior employees J. Butts, A. Chandler and H. Hollingsworth to perform overtime work repairing a derailment at Mile Post OBA 205.4 on the S&NA North Seniority District on February 3 and 4, 2019 instead of calling and assigning senior Trackmen C. Rose, T. McCord and T. Washburn thereto (System File NAS701219/19-41748 CSX).
2. As a consequence of the violation referred to in Part (1) above, Claimants C. Rose, T. McCord and T. Washburn shall be compensated eleven and one half (11.5) hours at their respective overtime rates of 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.

Claimants C. Rose, T. McCord and T. Washburn, have established and hold seniority in various classes within the Maintenance of Way Department. It is undisputed that on February 3

and 4, 2019, the Carrier assigned junior employees J. Butts, A. Chandler and H. Hollingsworth to perform overtime work repairing a derailment on mainline track at Mile Post OBA 205.4 on the S&NA North Seniority District. The Organization asserts that the Carrier violated the parties' Agreement by failing to assign the work to the Claimants.

The Carrier defends on the grounds that the work was necessitated by emergency conditions. According to a July 8, 2019 email from Trainmaster Ricky Witt, the derailment was an emergency which required the fastest and closest personnel to get the track repaired as soon as possible. As is well established, *see, e.g.*, PLB 6218, Award No. 5, emergency conditions allow the Carrier to exercise substantial latitude with respect to deviation from its contractual obligations.

Therefore, the issue in this matter is whether the circumstances presented a *bona fide* emergency which, under the Agreement, permitted the Carrier to assign the work to the junior employees. The Carrier has the burden of proving that such is the case.

While, as the Organization states, numerous awards hold that the mere assertion of an emergency situation is insufficient to meet that burden, *see, for example*, NRAB Third Division Award 33937, we find that this matter is distinguishable, as the instant record includes sufficiently detailed information for the Carrier to establish the requisite emergency. There is no dispute that there was a derailment on mainline, and that the track was damaged and needed to be repaired. The Organization does not dispute the Carrier's assertion that the track was shut down until it could be repaired.

As discussed in the caselaw provided by the Carrier, derailments present obviously unforeseen circumstances and generally result in emergency conditions which afford the Carrier wide latitude to complete the work as quickly as possible. In our opinion, the Organization has not justified its contention that this situation was not an emergency. We conclude that it was, and

the Carrier used the closest available employees to complete the work. The Carrier did not violate the parties' Agreement.

AWARD: Claim denied.

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Jacalyn J. Zimmerman
Neutral Member

A handwritten signature in black ink, appearing to read "Ross Glorioso".

Ross Glorioso
Organization Member

A handwritten signature in black ink, appearing to read "John Nilon".

John Nilon
Carrier Member

Dated: 3/14/2023