

AWARD NO. 525
Case No. 525

Organization File No. FLO71009
Carrier File No. 19-73940

PUBLIC LAW BOARD NO. 7163

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,
) INTERNATIONAL BROTHERHOOD OF TEAMSTERS
TO)
)
DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. The Agreement was violated when, beginning on October 19, 2019, to and including November 23, 2019 and continuing until the violation stops, the Carrier assigned junior employee C. Mullis to operate a tamper and ballast regulator between Mile Posts SF313 and SF315 on the Florence Division and failed to assign such work to employee L. Rogers (System File FLO710019/19-73940 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant L. Rogers shall now be compensated for "... one hundred and twenty three (123) hours overtime, and continuing hours until the violation stops, at the respective overtime rate of pay."

FINDINGS:

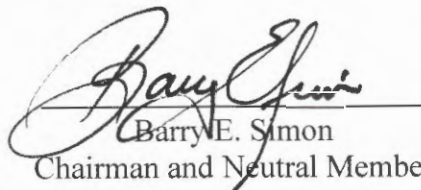
The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.


On the dates of claim, according to the Organization, Claimant was available and qualified to perform overtime work operating a tamper and ballast regulator on the Florence Division. It says the Carrier offered this work to an employee junior to Claimant. The Carrier has denied the claim,

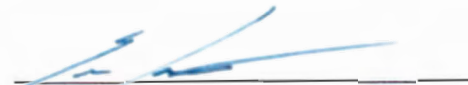
quoting Roadmaster James Trosper that "Claimant was not available and did not wish to work the weekend."

The Carrier has not disputed the Organization's contention that Claimant had a seniority right to the overtime work. Instead, it argues Claimant has made himself unavailable for work on the weekend. This is an affirmative defense that shifts the burden of proof to the Carrier. Claimant has denied Roadmaster Trosper's statement, and denies that the Roadmaster ever called him to offer the work. In light of this conflict, the Board must find that the Carrier has not met its burden of proof. We hold that the Agreement was violated and Claimant is entitled to the earnings he would have received had he worked on the dates of claim.

AWARD: Claim sustained. Carrier is directed to comply with this Award within 45 days.


Barry E. Simon
Chairman and Neutral Member


Ross Glorioso
Employee Member


Eric Caruth
Carrier Member

Dated: 9/29/22
Arlington Heights, Illinois