

PUBLIC LAW BOARD NO. 7163

**CASE NO. 588
AWARD NO. 588**

Brotherhood of Maintenance of Way Employees Division)	
of the International Brotherhood of Teamsters)	
)	
and)	Arbitration Decision
)	and Award
CSX Transportation, Inc.)	
)	
Carrier File:20-54740)	
BMWE File: DO-2017CSX-018)	

I. STATEMENT OF THE CLAIM

: “Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when, on April 24, 2020, it assigned junior employee C. Kawski to perform overtime work placing large rip-rap at Mile Post QD 30.2, on the Cleveland Seniority District in Irving, New York and failed to offer and assign such work to senior employee R. Wenke (System File DO-2017CSX-018/20-54740 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Wenke shall now be compensated for nine (9) hours at his respective overtime rate of pay for all hours lost, including all benefits and credits due.”

II. RELEVANT CONTRACT ARTICLES AND RULES

RULE 17 - PREFERENCE FOR OVERTIME WORK

III. FACTS

On April 24, 2020, the Carrier assigned junior employee C.K. work placing large rip-rap at Mile Post QD 30.2, in the Cleveland Seniority District, in Irving, NY, working from 07:00 until 16:00, for a total of nine (9.0) hours.

The Claimant and C.K. are assigned to the same B&B Assistant Foreman positions on Team 6K83, working on the Great Lakes Service Lane, with a regular shift of Monday through Thursday from 07:00 until 17:30, with Friday, Saturday and Sunday assigned as rest days. There is no dispute that the Claimant possesses a B&B Machine Operator seniority over C.K.

The record indicates that Bridge Supervisor Scott Dozanti needed one employee to assist the track team in unloading a rip rap train the next day (Friday) for planned work on an erosion spot next to a lake. Mr. Dozanti assigned the work to C.K., who worked the shift from 0700-1600, for a total of 9 hours. The Claimant grieved that assignment, claiming that he was entitled to the overtime assignment, but was not contacted by management before it was given to C.K. The Carrier submitted an email from Mr. Dozanti that he had contacted the Claimant, who declined the overtime opportunity.

There is no dispute that the Claimant had seniority over C.K. The Organization requested documentation pursuant to Rule 24(i) to substantiate the statement by Mr. Dozanti that he had contacted the Claimant before C.K., but none was received.

III. POSITIONS OF THE PARTIES

Organization's Position

The Organization argues that the Claimant was deprived of the work opportunity described above despite the fact that he had superior seniority rights over the junior employee assigned to perform the work by the Carrier.

It contends that the Carrier never presented any credible evidence to support its affirmative defense, despite requests for information to substantiate the claim from Mr. Dozanti

that the Claimant had been contacted. Therefore, the Organization submits that this assignment was improper.

Carrier's Position

The Carrier argues that there was no violation. It asserts that, based on the emailed statement from Mr. Dozanti, the overtime work was offered to all of the employees assigned to the 6K83 the day prior to the work occurring. It contends that the Claimant failed to accept the assignment and thereafter it was properly given to C.K. It argues, therefore, that without proof of its assertion, the Organization's claim lacks merit.

IV. DECISION

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The Carrier does not dispute the Organization's contention that the Claimant had a seniority right to the overtime work. Instead, it argues that the Claimant declined the offer to work assignment. However, when the Organization requested information, pursuant to Rule 24(1), regarding the Carrier's contact with the Claimant, none was forthcoming.

The Third Division in Award 37831 (CSX) imposed an adverse inference upon the Carrier for its failure to provide relevant information to the Organization and granted the Organization's claim. In pertinent part, NRAB Third Division stated:

Although there was some dispute in the record about the number of hours worked by contractor personnel, it is clear from the record that the Organization requested documents three times pursuant to its inspection rights under Rule 24(i) to determine the correct number. According to the record, the Carrier did not permit an inspection or provide the records. We find this to be an independent violation of the Agreement. As such, the Organization is entitled to the adverse inference that the documents would have supported the hours claimed. Therefore, we sustain the claim as presented.

In this case, the Board finds that the Organization is entitled to an adverse inference against the Carrier for its failure to support its contentions. Therefore, we sustain the Organization's claim as presented. Consequently, the Claimant must be compensated for his loss of work opportunity.

V. AWARD

The claim is SUSTAINED. The Claimant shall be compensated for nine (9) hours at his respective overtime rate of pay for all hours lost, including all benefits and credits due. The Carrier is directed to comply with this Award within 45 days.



Casey Summers
Organization Member



John Ingoldsby
Carrier Member



Sheila Mayberry, Chair and Neutral Member
December 13, 2024