

AWARD NO. 18

Case No. 18

Organization File No. DM-2109-PL-002 PLR

Carrier File No.

PUBLIC LAW BOARD NO. 7460

PARTIES) BROtherHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION
)
TO)
)
DISPUTE) PADUCAH & LOUISVILLE RAILWAY

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when, on July 31, August 2 and 15, 2021, it assigned Mobile Machine Operator L. Flener to perform overtime service consisting of providing Maintenance of Way flagging at Mile Post 200.5 on the Princeton, Kentucky Territory at the exclusion of senior, regularly assigned, Class V, Foreman J. Prince (System File DM-2109-PL- 002 PLR).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Prince shall now be compensated all overtime worked by L. Flener plus any differential pay and per diem.

FINDINGS:

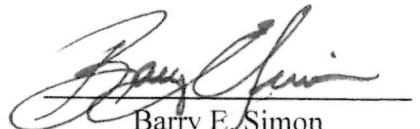
The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated December 16, 2010, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

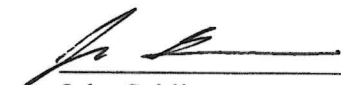
On July 31 and August 15, 2021, both Saturdays, the Carrier utilized Machine Operator L. Flener to perform flagging work on his rest day. He was compensated at the overtime rate for service performed on those days. The Carrier has denied he worked on August 2, 2021, and the Organization has not met its burden of proving otherwise.

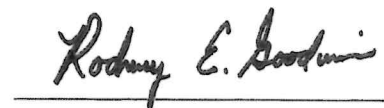
The Organization contends Claimant should have been used for this work inasmuch as he holds seniority as a Foreman, and Machine Operator Flener does not. The Carrier argues it was proper to call Flener for this work as he is senior to Claimant.

Rule 9(c) of the Agreement dictates that "overtime on a territory shall go to the regular assigned employees on such territory on a seniority basis." We have been referred to no provision of the parties' Agreement that either reserves or gives preference to flagging work to Foremen. Although the Organization argues there is a past practice of assigning such work to Foremen, the Carrier denies it has done so on an exclusive basis. In the absence of a Rule reserving such work to Foremen, the Organization bears the burden of proving a long-standing past practice. We find it has not met that burden of proof. Accordingly, we cannot find that the Agreement was violated.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


John Schlismann
Employee Member


Rodney Goodwin
Carrier Member

Dated: 12/18/2024
Arlington Heights, Illinois