

PUBLIC LAW BOARD NO. 7599

**AWARD NO. 128
CASE NO. 128**

**PARTIES TO
THE DISPUTE:** Brotherhood of Maintenance of Way Employees Division
IBT Rail Conference

vs.

Grand Trunk Western Railroad Company

ARBITRATOR: Gerald E. Wallin

DECISION: Claim dismissed

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it failed to offer and assign Mr. J. Comage to perform overtime work associated with snow duty on February 10, 2016, located at Pontiac Yard, Detroit Seniority District in Pontiac, Michigan and instead assigned junior employee S. Stevens thereto (System File Comage022816/GTW-BMWED-2016-00006 GTW).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Comage shall now be compensated for six and one-half (6.5) hours at the applicable welder helper's time and one-half rate of pay for February 10, 2016."

FINDINGS OF THE BOARD:

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 record in this dispute presents two conflicting account of the operative facts. The Carrier's foreman claims that he offered the overtime opportunity to the Pontiac track gang and asked for interested volunteers to stay over to clear snow from switches. According to the foreman, claimant was present at the meeting but did not volunteer. As a result, a trackman with less seniority volunteered for the opportunity.


According to the Organization and claimant, claimant was not at the meeting and was not informed that overtime was requested.


Both the Organization and Carrier supported their versions of the facts with email statements. Thus we are confronted with irreconcilable factual differences that cannot be resolved by this Board. Accordingly, the claim must be dismissed.

AWARD:

The Claim is dismissed.


Gerald E. Wallin, Chairman
and Neutral Member


John Schlismann,
Organization Member


Patrick Crain,
Carrier Member

Date: 20 Mar 2013