

**PUBLIC LAW BOARD NO. 7104**

<b>BROTHERHOOD OF</b>	)	
<b>MAINTENANCE OF WAY EMPLOYEES</b>	)	
<b>DIVISION – IBT RAIL CONFERENCE</b>	)	
	)	<b>CASE NO. 1</b>
<b>vs.</b>	)	<b>AWARD NO. 1</b>
	)	
<b>CSX TRANSPORTATION, INC.</b>	)	

**STATEMENT OF CLAIM:**

Claim of the System Committee of the Brotherhood that:

- 1) The Agreement was violated when the Carrier called and assigned Mr. M. King to perform overtime service (cut a tree) at Mile Post BA 276.9 on June 24, 2001, instead of Mr. G. Carrico [System File G011522701/12(01-0463) CSX].
- 2) As a consequence of the violation referred to in Part (1) above, Claimant G. Carrico shall now be compensated for six (6) hours' pay at the production trackman's time and one-half rate of pay.

**FINDINGS:**

Public Law Board No. 7104, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

This case concerns the Claimant's assertion that on June 24, 2001, the Carrier violated the parties' agreement when it failed to call him for overtime service, and used Track Foreman M. King to remove a large tree which had fallen and blocked both main tracks. The Claimant provided a signed statement indicating that he was at home that evening, with his answering machine on. His wife also signed the statement. Carrier Chief Regional Engineer Tucker stated that no employees of Force 5D41, including Claimant, responded to the calls for service.

The Organization points out that the instant dispute involves the Carrier's decision to assign a foreman from Force 5GCA to perform overtime work of employees assigned to Force 5D41 on Sunday, June 24, 2001. The Organization states that it is undisputed that the work is the sort customarily performed by the employees, as the Carrier has acknowledged. The Carrier's defense, the Organization states, is that the

employees were called to work, but none answered their telephones. This, the Organization states, is a tacit admission by the Carrier that the employees were entitled to the work.

The Organization states that it has established a prima facie case, such that the burden shifts to the Carrier to disprove its claim. The Organization notes that mere rebuttals are not sufficient, and actual proof must be submitted. The Organization points out that the Carrier has presented no evidence as to who made the alleged calls, what numbers were called or how many attempts were made to contact the employees. The Organization also notes that it presented a signed statement from Claimant and his wife, attesting to the fact that he was at home with his answering machine turned on at the time in question, but there is nothing in the record from the Carrier to rebut his statement. Therefore, the Organization states, its claim should prevail.

The Carrier asserts that there is a basic conflict of fact in this case, as the Claimant asserts that he was not called for overtime on the day in question, and the Carrier contends that he was. The Carrier points out that it has been routinely held that it is beyond the province of this Board to resolve such conflicts of fact, and have dismissed claims involving such defects.


The record lacks, the Carrier states, the probative evidence which would support the Organization's allegations or resolve the factual dispute. Thus, the Carrier states, the claim should be dismissed.


The Board has carefully reviewed the record in its entirety. Initially, we conclude that this case does not present an irreconcilable dispute of fact, as the Carrier asserts. Rather, we find, the Organization met its burden of proof by submitting Claimant's statement that he was available, at home with his answering machine turned on, and received no call from work concerning the overtime in dispute. At that point, it became incumbent upon the Carrier to provide direct evidence as to who, specifically, placed the asserted call, and when and how many times it was made. In the absence of such evidence, we must conclude that the Carrier did not rebut the Organization's prima facie case, as the Carrier must do more than simply state that the Organization's evidence should not prevail. Because the Carrier does not dispute that Claimant would have been entitled to the overtime work had he been available, the claim must be sustained.

AWARD

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

  
JACALYN J. ZIMMERMAN  
Neutral Member

  
MATTHEW BORZILLERI  
Carrier Member

  
TIMOTHY KREKE  
Organization Member

Dated this 5<sup>th</sup> day of June, 2008.