

PUBLIC LAW BOARD NO. 7104

BROTHERHOOD OF	)	
MAINTENANCE OF WAY EMPLOYEES	)	
DIVISION – IBT RAIL CONFERENCE	)	
	)	CASE NO. 3
vs.	)	AWARD NO. 3
	)	
CSX TRANSPORTATION, INC.	)	

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- 1. The Agreement was violated when the Carrier called and assigned Track Inspector S. Smith to perform overtime service (repair broken rail) at the Benton Road crossing, Lansing Michigan on October 28, 2001, instead of Mr. D. Taylor [System File H45234401/12(02-0049)CSX].**
- 2. As a consequence of the violation referred to in Part (1) above, Claimant D. Taylor shall now be compensated “ . . . for eight and one-half (8½) overtime hours at \$29.16 per hour, account of the aforementioned rules violations as well as this loss of work opportunity.”**

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.

On November 26, 2001, the Organization filed a claim for 8½ hours’ overtime on Claimant’s behalf, asserting that on Sunday, October 28, 2001, Roadmaster M. Schultz called Track Inspector Steve Smith to repair a broken rail at Benton Road crossing, Lansing, MI, MP CH103. The claim alleged that Claimant was senior to Mr. Smith as a trackman and foreman, was at home and available for the work, but was not called. The claim stated that the Carrier was therefore in violation of Rules 1, 3, 4 and 17 of the parties’ 1999 Agreement.

The Carrier responded on January 11, 2002, stating that its investigation revealed that Carrier Roadmaster Schultz had attempted to call out Claimant but received no

answer to the call. Therefore, the Carrier concluded, Claimant was unavailable, and the claim was denied. On January 21, 2002, the Organization requested that the Carrier produce telephone records to verify Roadmaster Schultz' contention, but none were forthcoming.

The Carrier produced an e-mail from Mr. Schultz, dated January 4, 2002, which stated:

To whom it may concern:

Yes I did call Track Inspector Smith to **FLAG OR VISUAL WALK** trains over the broken rail at Benton road on the Plymouth Sub. And he may have assisted the section in repairs.

But I always call the section first, and Mr. Taylor was called but there was no answer, also Mr. Taylor is called quite often and refuses the Overtime.

In my Judgment the claim should be DENIED!

By letter dated June 27, 2007, the Organization confirmed the Carrier's denial of the claim and presented statements from Claimant and his mother attesting to the fact that he had been at home on the date in question. One undated statement by Claimant indicates, in part, "I have a signed statement, which verifies my presents (sic) at home and that there was no phone call made to our residence . . ." A signed statement by Mrs. Maxine Taylor, Claimant's mother, states, "I would like to verify that on October 28, 2001 David Taylor was home and available for work. Any phone calls made to are (sic) residence were answered, we did not receive any phone calls from Road master Schultz or any other CSX road master or representative."

The Organization points out that there is no dispute that Claimant was entitled to perform the overtime work in preference to Mr. Smith, a junior employee. The Organization states that the Carrier's only defense is that Roadmaster Schultz attempted to call Claimant, but the Organization presented two written statements from Claimant, and one from his mother, attesting that he was at home and available for work on the day in question, but received no call for work. The Organization contends that Mr. Schultz' statement amounts to no more than a blanket assertion, with no specificity regarding his supposed attempt to call Claimant. The Organization concludes that this assertion is insufficient to overcome its proffered evidence, and the claim must be sustained.

The Carrier contends that the Board should reject the Organization's argument that it violated Rule 17, Section 1(b) and dismiss the claim. The Carrier asserts that it is obvious there is a conflict in a key fact of this dispute, as Claimant states that he was not called for overtime on the date at issue, but the Carrier has advised that Roadmaster Schultz attempted to contact Claimant for this work and he did not respond to his telephone call. Thus, the Carrier states, a critical fact remains unresolved.

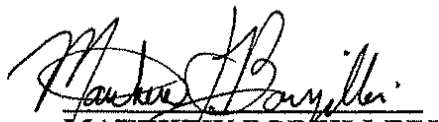
The Carrier notes that it is well-established that it is beyond this Board's province to resolve such conflicts, and arbitration tribunals in this industry routinely dismiss claims containing such defects. Such, the Carrier concludes, should be the result here. The Carrier also points out that it in the event this Board finds an agreement violation, the remedy, according to numerous awards, should be limited to payment at the straight time rate.

The Board has carefully reviewed the record in its entirety. We conclude that this case does not present an irreconcilable conflict of fact, as the Carrier asserts. Rather, we find, the Organization has met its burden of proof. The statements of Claimant and his mother attest that he was at home and available to work, that all phone calls to his residence were answered, and that no calls were received from the Carrier. Given this information, it was incumbent upon the Carrier to provide direct evidence demonstrating that Claimant was in fact called. However, Roadmaster Schultz' e-mail, the only documentation proffered by the Carrier is, we find, simply too vague and general to constitute such evidence. It was promulgated more than two months after the date of the incident, does not indicate the date on which Claimant was supposedly called, and does not identify the telephone number called, the number of attempts or the times of any calls. Moreover, while the e-mail indicates that "I (Mr. Schultz)" called Mr. Smith, it states simply that Claimant "was called" and does not indicate with specificity that it was even Mr. Schultz who called him. In short, it amounts to nothing more than a general assertion that Claimant was called for the overtime. We therefore conclude that the Carrier did not rebut the Organization's prima facie case, as the evidence proffered by the Carrier is insufficient to create an irreconcilable factual conflict. Because the Carrier does not dispute that Claimant would have been entitled to the overtime if he were available, the claim is sustained.

AWARD

Claim sustained. The Carrier is directed to comply with this award within 30 days.


JACALYN J. ZIMMERMAN
Neutral Member


MATTHEW BORZILLERI
Carrier Member


TIMOTHY KREKE
Organization Member
Oct. 10, 2008

Dated this 10th day of October, 2008.