

PUBLIC LAW BOARD NO. 7163

AWARD NO. 5

CASE NO. 5

Carrier File: 12 (03-0511)

BMW File: G31803403

PARTIES TO
THE DISPUTE: Brotherhood of Maintenance of Way Employees
 Division - IBT Rail Conference
 vs.
 CSX Transportation, Inc.

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained.

STATEMENT OF CLAIM:

- “1. The Carrier violated the Agreement when failed to call and assign Vehicle Operator T. C. Brown for overtime work on January 18, 27 and February 6, 2003 and instead called and assigned Track Foreman B. Caldwell to perform said work [System File G31803403/12(03-0511) CSX].
2. As a consequence of the violation referred to in Part (1) above, Claimant T. C. Brown shall be compensated for seven and one-half (7.5) hours at his respective time and one-half rate of pay.”

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 operative facts are undisputed. Both claimant and Track Foreman Caldwell are assigned to Force 5GB3. Claimant holds the Vehicle Operator position on the Force. On three occasions, overtime vehicle operation work was needed for between two and three hours. The vehicle involved in the dispute was the same vehicle normally and customarily operated by claimant during the work week. Claimant was fully qualified and available to perform the overtime work.

In denying the claim, the Carrier provided only two reasons: First, that driving vehicles does not accrue only to the Vehicle Operator position and, second, that other positions advertised for bid also require CDL licensing to qualify, with Track Foreman being one of those other positions.

After careful examination of the record, it is apparent that the Carrier has misunderstood the critical focus of the dispute. Contrary to the Carrier's position, the instant dispute does not involve exclusivity as it pertains to intra-craft work jurisdiction claims. Instead, the pivotal question in this dispute is the proper distribution of overtime work opportunities.

Moreover, it appears from the prior awards cited by the Organization that the precise issue of overtime distribution involved in this controversy has been decided in prior awards between these

same parties at least once and probably three times before. See Third Division Award 37317.

Whatever may be the relative rights among the various classifications on Force 5GB3 to drive Carrier vehicles during the course of the regular work day, the parties have developed a specific rule to govern the distribution of overtime work opportunities as they may arise. It provides as follows:

RULE 17 - PREFERENCE FOR OVERTIME WORK

Section 1 - Non-mobile gangs:

(a) When work is to be performed outside of the normal tour of duty in continuation of the day's work, the senior employee in the required job class will be given preference for overtime work ordinarily and customarily performed by them. When work is to be performed outside of the normal tour of duty that is not in continuation of the day's work, the senior employee in the required job class will be given preference for overtime work ordinarily and customarily performed by them.

* * *

The prior awards cited by the Carrier in support of its exclusivity position are inapposite. They are readily distinguishable on their facts or rule language.

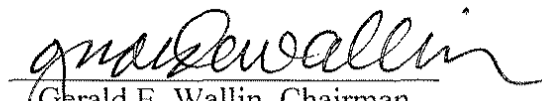
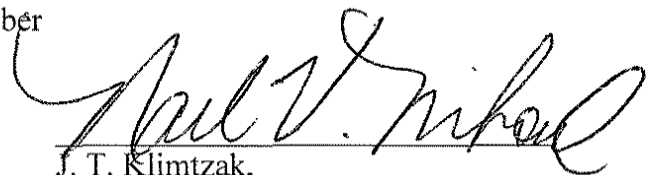
Given the fit of the facts of this record to the terms of Rule 17, we must sustain the claim.

AWARD:

The Claim is sustained. The Carrier is directed to comply with this Award on or before thirty (30) days following the date of signing shown below.



R. C. Robinson,
Organization Member


Gerald E. Wallin, Chairman
and Neutral Member

J. T. Klimtzak,
Carrier Member

Date: Dec. 12, 2008