

NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD No. 7163

<b>Brotherhood of Maintenance of Way</b>	)		
<b>Employees Division, IBT Rail Conference</b>	)		
	)		
<b>vs.</b>	)	<b>Case No.</b>	<b>117</b>
	)	<b>Award No.</b>	<b>117</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 failed to call and assign employees S. Simmons, R. Tackett and M. Maus to perform overtime work on August 15, 2010 and instead called and assigned junior employees A. McLaughlin, R. McLaughlin, D. Dryer and W. Page (System File H45137410/2010-077109).
2. As a consequence of the violation referred to in Part 1 above, Claimants S. Simmons, R. Tackett and M. Maus shall now be compensated for fourteen (14) hours at their respective overtime rates of pay.”

[BMWE Submission at 1]

**Findings:**

Public Law Board No. 7163, upon the whole record and all the evidence, finds that (1) the parties to this dispute are Carrier and Employees within the meaning of the Railway Labor Act as amended, (2) the Board has jurisdiction over this dispute, and (3) the parties to the dispute were accorded due notice of the hearing and participated in this proceeding.

This claim was timely presented by the Organization and responded to by the Carrier at all stages of processing including conference. With the unresolved claim handled in the customary and usual manner, the record established by the parties is now before the Board for adjudication.

Claimant Simmons holds seniority as a Foreman, Claimant Tackett holds seniority as a Vehicle Operator and Claimant Maus holds seniority as a Trackman. Claimants were assigned to those positions on Service Lane Work Territory Gang 5P28 in the Detroit Service Lane (DSL) in August 2010. Their duties regularly include installation of road-crossing panels throughout the DSL.

On August 13, 2010, Claimants informed their supervisor that they were available and able to work overtime. On Sunday, August 15, 2010, the Carrier assigned overtime work of installing crossing panels near Mile Post 57.2 in the vicinity of Howell, Michigan to the claimed-against junior employees and not to the senior Claimants.

The Organization asserts that the Carrier violated Claimants' seniority rights under Rule 1 - Seniority Classes, Rule 4 - Seniority, Rule 11 - Overtime and Rule 17 - Preference for Overtime Work. With respect to Rule 17, Section 1(a) states that when non-continuous work is performed outside the normal tour of duty "the senior employee in the required job class will be given preference for overtime work ordinarily and customarily performed by them" and Section 1(b) provides "[i]f additional employees are needed to assist in the work, other employees located within the seniority district will be offered/called in the order of their seniority."

According to BMW, Section 1(b) reinforces "the fact that when employees are needed for overtime work within a designated territory, employees within said territory will be offered/called in the order of their seniority" and since Claimants Simmons and Tackett "were the senior employees in the required job class (foreman and vehicle operator respectively) ... [they] should have been called for this overtime work opportunity." [Submission at 10]

The installation of road-crossing panels, the Carrier asserts, is regularly and customarily assigned to Headquartered Basic Forces. The junior employees called for this overtime were basic-force, non-mobile gang employees working in the designated territory; they receive preference for this overtime prior to Claimants on a basic-force floating team.

The Carrier states seniority is a factor when assigning overtime under Rule 17 but not the sole factor. Section 1(a) provides that a non-mobile gang junior employee may stand for overtime over a senior employee based on the work that the junior employee customarily performs. Since the claimed overtime work involved non-mobile gang junior employees that regularly perform this non-specialized work the Carrier assigned the overtime to them. This met the Carrier's manpower requirements for the overtime work so there was no need to invoke Section 1(b) and solicit additional employees.


The Board's review of the record shows that the parties agree Rule 17, Section 1 - Non-mobile gangs is controlling in this claim. Furthermore the Board finds there is no dispute that (1) the work was non-continuous overtime performed outside the normal tour of duty and (2) the Claimants and junior employees ordinarily and customarily perform installation of road-crossing panels. Section 1(a) is applicable given these findings.

When BMW appealed the claim declination, it argued there was no documentation in the record showing that the junior employees are Headquartered Basic Force. In the record are the Division Engineer's and Roadmaster's statements confirms that the basic force team "perform the work in this area of operation[.]" The record shows, moreover, that the junior employees are headquartered on the basic-force gang on the seniority district within the Detroit Service Lane that is regularly performing this work.

Based on these findings the Board concludes that Rule 17 Section 1(a) was properly applied in this situation when the Carrier called basic-force, non-mobile gang junior employees for this non-continuous overtime work performed outside their normal tour of duty. Additional employees were not needed so Section 1(b) was not invoked and, consequently, the Claimants were not called for this overtime work.

In view of these findings the claim is denied.

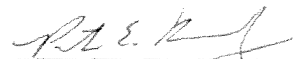
**Award:**  
Claim denied.



Patrick J. Halter  
Neutral Member  
PLB No. 7163 Case No. 117



Carrier Member  
Robert A. Paszta



Organization Member  
Peter E. Kennedy

Dated this 23 day of Oct, 2012