

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD No. 7163**

Brotherhood of Maintenance of Way)	
EmploYES Division, IBT Rail Conference)	
)	
vs.)	Case No. 118
)	Award No. 118
)	
CSX Transportation, Inc.)	

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 Messrs. J. Parker and D. Mount to work overtime at and between Mile Posts 00H194.4 and 00H321.0 on the Nashville Division on June 4, 2010 and continuing through June 8, 2010 and instead called and assigned junior employees W. Thompson and L. Lester (System File 156753410/2010-071192).
2. As a consequence of the violation referred to in Part 1 above, Claimants J. Parker and D. Mount shall now each be compensated at their respective and applicable rates of pay for the total number of overtime hours worked by junior employees W. Thompson and L. Lester on June 4, 2010 and continuing through June 8, 2010."

[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.

In June 2010 the Claimants were assigned to the position of Machine Operator "A" in the Track Department on the Nashville Division. Claimants regularly perform track maintenance and repair work in their assignments and they hold seniority in the required job class over the claimed-against junior employees.

Beginning on June 4, 2010 and continuing thereafter the Organization claims that the Carrier assigned overtime work involving track maintenance and repair to the junior employees. This assignment, the Organization asserts, violated Claimants' seniority rights under Rule 1 - Seniority Classes, Rule 4 - Seniority, Rule 11 - Overtime and Rule 17 - Preference for Overtime Work because the Carrier "failed to properly call and/or offer the subject overtime work to Claimants."
[BMWE Submission at 7]

According to the Carrier the Claimants were offered the overtime work but declined it thereby leading the Carrier to offer the assignment to junior employees. Since the overtime work was assigned consistent with Rules 1, 4, 11 and 17 the Carrier asserts that there was no loss of work opportunity for Claimants.

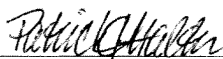
Having reviewed the record the Board observes that there is no dispute the junior employees performed the claimed overtime work. There is a dispute, however, whether the Carrier offered the claimed work to the junior employees in accordance with the controlling rules. In this regard, the Carrier maintains that it complied with the rules because the Roadmaster's e-mail, dated September 28, 2010, states that the Claimants declined the offer for this overtime work due to the short notice of the offer and the scheduled work occurred on Claimants' days off. During conference on April 5, 2011 the Organization submitted an undated statement from Claimant Parker wherein he asserts the Roadmaster did not offer the work to Claimants.

The Roadmaster's e-mail and Claimant Parker's undated statement are part of the evidentiary record. The Board accords equal value to each statement for what it purports to prove. Nevertheless, the Board is confronted with divergent and competing views in support of a material fact that is dispositive to the outcome of this claim. That is, did the senior Claimants decline the Carrier's offer for the overtime work or did the Carrier not offer the overtime work to Claimants?

In this appellate forum the Board resolves an evidentiary conflict on a material fact in this manner. There is a stalemate of evidence in the record established by the parties and placed before the Board for review; however, the Organization is responsible for the burden of proof to establish its claimed violations of Rules 1, 4, 11 and 17. The Organization has not satisfied that burden in this proceeding. Therefore the claim is denied.

Award:

Claim denied.



Patrick J. Halter

Neutral Member

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Carrier Member

Robert A. Paszta



Organization Member

Peter E. Kennedy

Dated this 23 day of Oct, 20 12