

**Public Law Board 7163**

Award No. 14

**Parties to the Dispute:**

**Brotherhood of Maintenance of Way Employees Division**

**IBT Rail Conference**

**and**

**CSX Transportation, Inc.**

**(R. Younkin – Claimant)**

**STATEMENT OF CLAIM:** “Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Pittsburgh West Seniority District employee W. Heinbaugh to perform work (operate ditcher) on Pittsburgh East Seniority District territory between Mile Posts BF 244.0 and BF 270.1 on November 24 and 25, 2003, “instead of Pittsburgh East Seniority District operator R. Younkin [System File A04818803/12(04-0322) CSX].
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Younkin shall now be compensated for sixteen (16) hours at the Class A Machine Operators straight time rate of pay.

**Findings:**

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934. Public Law Board 7163 has jurisdiction over the parties and the dispute involved herein.

At the time of the incident giving rise to the instant claim, Claimant had established and held seniority as an Equipment Operator on the Pittsburgh East Seniority District. It is undisputed from the record that the Carrier assigned a Pittsburgh West Seniority District to perform Machine Operator work on the East Seniority District on the dates stated in the claim. The Organization claims that this was a violation of the seniority district reservation found in Rule 4. The Carrier counters that there was an emergency situation that allowed the Carrier to deviate from the Agreement and assign work without the assignment being a violation of the Agreement.

Numerous Awards stand for the proposition that the Carrier is allowed substantial leeway during emergency assignments. However, the burden of proof is on the Carrier to establish that there was an emergency. The mere assertion of an emergency situation is insufficient to meet that burden. (See eg. Award 33937)

The Organization has established a prima facie case that the Carrier violated the Agreement with the assignment across the seniority district. The Carrier maintains that there was an emergency and that the parties are in agreement that there was an emergency. The Carrier's submission states at page 4:

CSXT, BMW and Claimant Younkin all agree that on the dates of claim, Heinbaugh's performance of ditching duties on the Pittsburgh East Seniority District, where he did not hold any seniority as a Machine Operator, was caused by emergency track washout conditions. It is well-established that the Carrier, in an emergency, has broader latitude in assigning work than under normal circumstances; in an emergency, Carrier may assign such employees as its judgment indicates are required and it is not compelled to follow normal Agreement procedures.

The Claimant's statement contains the following notation: “

Note: The emergency work was performed on the Pittsburgh East seniority district at MP between P 253.0 – BF 268.9 #1 & 2 Track which is my seniority district.-

Contrary to the Carrier's assertion, the Claimant's statement does not indicate that a statement about “emergency work” was an admission by Claimant that there was an emergency. The statement was dated 90 days after the incident giving rise to the claim and contains no agreement that there was an emergency. The Organization's correspondence dated March 24, 2004, states:

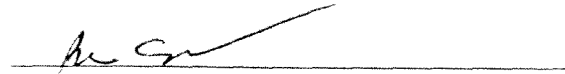
Referring to the declination letter dated January 28, 2004, . . . Referring to the “emergency washout of the track condition” which occurred on Pittsburgh West End Seniority District is not correct. The violation of the Agreement occurred on the Pittsburgh East Seniority District.

A review of the Organization's correspondence does not indicate that a statement about “emergency washout” was an admission by the Organization that there was an emergency. There is nothing in the record to support the contention that there was an emergency save for a mention in the Carrier correspondence. However, that mere mention during the handling of the claim is insufficient here to establish an emergency. Accordingly, the Carrier has not established the affirmative defense of emergency.

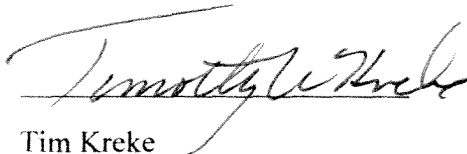
After a review of the record, and the Award citations contained therein, the Board finds that the Organization's position is persuasive and the Carrier's affirmative defense of emergency has not been established.

**Award:**

Claim sustained.

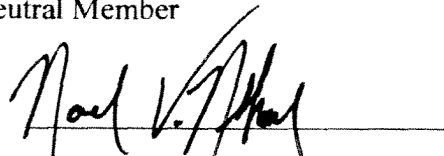


Brian Clauss  
Chairman and Neutral Member



Tim Kreke  
BMW

Organization Member



~~James Klimentz~~ Noel V. Nihoul  
CSX Transportation, Inc.

Carrier Member

Dated this 2<sup>nd</sup> day of August 2010