

Public Law Board 7163

Award No. 17

Parties to the Dispute:

Brotherhood of Maintenance of Way Employees Division

IBT Rail Conference

and

CSX Transportation, Inc.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned other than vehicle operators (i.e. foremen, machine operators) to operate a six-man pickup truck (CSX 116010) in performing track repair and maintenance work in Frontier Yard at Buffalo, New York beginning February 11, 2004, and continuing, instead of Vehicle Operator M. Stortz or Vehicle Operator S. Bukaczeski [Carrier's File 12(04-0620) CSX]
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Stortz shall now be compensated at the applicable vehicle operator rate of pay for all lost straight time and overtime hours beginning February 11 and continuing through February 22, 2004 And Claimant S. Buckaczeski shall now be compensated at the applicable vehicle operator rate of pay for all lost straight time and overtime hours beginning February 23, 2004 and continuing and each Claimant shall also receive all credits and benefits that may have been lost as a result of this violation.

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, Claimants had established and held seniority as Vehicle Operators on the Buffalo Seniority District and were assigned to Gang 5Q21. At the time of the incident giving rise to this claim, the Claimants were on furlough.

The Organization claims that the pickup truck was operated every day by foremen and machine operators in connection with routine track maintenance and repairs. Routine operation of six-man pickup trucks has historically and customarily been performed by employees in the vehicle operator class. The Claimants are entitled to the work. Further, because overtime work was involved, Rule 17 Preference for Overtime Work applies. Moreover, the Carrier's defense that the driving was de minimus should be rejected because the truck was used throughout the day.

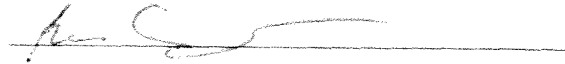
The Carrier counters that the Agreement does not give employees in the vehicle operator class the exclusive right to operate a six-man pickup truck. The Organization admits that the vehicle at issue was driven for approximately one hour a day. Accordingly, that hour is a de minimus use by the employees. Driving the pickup was not the primary duty of the employees, rather, it was an allowable duty in addition to the primary duties. In addition, the Organization's contention that using tools off the truck is "operation" of the truck is not persuasive. Finally, the Organization can point to no Agreement provision that requires either of the Claimants to be recalled.

The burden is on the Organization to establish a violation of the Agreement. This Board has carefully reviewed the evidence in this claim and must conclude that the Organization has not met that burden. The Agreement does not give the exclusive right to operate a six-man pickup to the Vehicle Operator class. Further, the Carrier maintains that the operation of the vehicle was secondary to the primary duties of the employees and that the vehicle was operated for approximately an hour a day. A review of the statements submitted by the Organization does not establish anything more than the vehicle was used for track maintenance. The statements do not establish how often that the vehicle was operated. Moreover, a review of the correspondence indicates agreement that the pickup was operated for approximately an hour a day. From this record, the Carrier's argument that the operation of the vehicle was secondary to the employees' duties is persuasive.

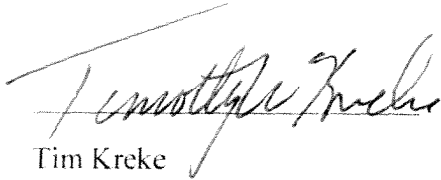
After a review of the record, and the Award citations contained therein, the Board finds that the Organization's has not met its burden.

Award:

Claim denied.

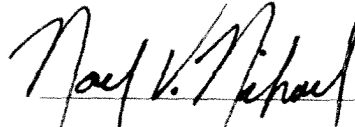


Brian Clauss
Chairman and Neutral Member



Tim Kreke
BMW

Organization Member



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

Carrier Member

Dated this 2nd day of August 2010