

Public Law Board 7163

Award no. 19

Parties to the Dispute:

Brotherhood of Maintenance of Way Employees Division

IBT Rail Conference

and

CSX Transportation, Inc.

(T Franklin – Claimant)

Statement of Claim:

Claim of the System Committee of the Brotherhood that:

1) The Agreement was violated when the Carrier assigned junior employee M. Ward to a flagging position working between Mile Posts WA 12.0 and 15.0 on the Southern Region “beginning October 20, 2004 and continuing instead of Mr. Franklin.”

2) As a consequence of the violation referred to in Part (1) above, Claimant T. Franklin shall be compensated for ‘...all the straight time and overtime made by Mr. Ward beginning on October 20, 2004 and continuing until the violation stops.”

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 in various classes in the Track Department on Carrier’s Southern Region, including as a trackman. Claimant was working as a track inspector on the Carrier’s Southern Region. He worked a Wednesday through Saturday workweek from 0730 to 1800 hours. Employee M. Ward also holds seniority as a trackman, but his seniority date is junior to Claimant’s seniority date.

On October 20, 2004, Carrier assigned an employee to perform flagging work for a contractor working on the tracks between Milepost WA 12.0 and Milepost WA 15.0. Employee M. Ward was the assigned employee.

By letter dated October 28, 2004, the Organization's Vice Chairman presented a claim regarding the inappropriate assignment of junior employee Ward to perform flagging duties on October 24, 2004 and continuing.

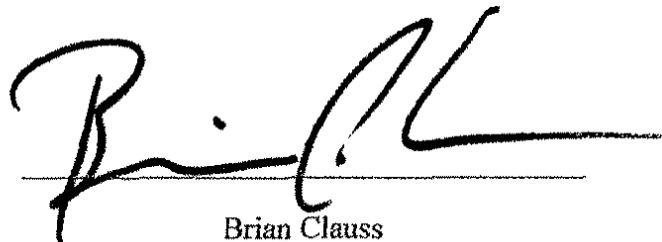
The Organization argues that the Carrier violated Rule 4 on Seniority and Rule 11 on Overtime when it assigned a junior trackman to perform flagging work instead of assigning Claimant. The Carrier maintains that the flagging on October 20, 2004 resulted in two and a half hours of overtime and was a continuation of the employees work. The Carrier further claims that flagging can be performed by any qualified Class or Craft and is not a position covered by the June 1, 1999 BMW Collective Bargaining Agreement. Rather, flagging is a duty that can be performed by craft and non-craft personnel.

During the processing of the instant matter, the parties entered into a Memorandum of Agreement regarding the Scope Rule of the Collective Bargaining Agreement. Included in the Memorandum is a section entitle Flagging Work that established the classification of Assistant Foreman – Flagman and discusses the work to be done by this new classification.

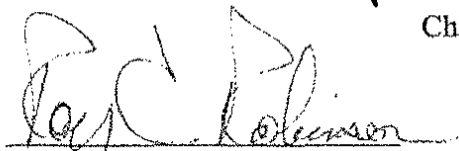
After a review of the record, the Board finds that the Organization has not established a violation of the Collective Bargaining Agreement,. Accordingly, after a review of the evidence submitted and the arguments before this Board by the parties, this Board finds that the Agreement was not violated.

Award:

Claim is denied.

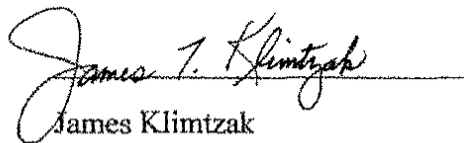


Brian Clauss
Chairman and Neutral Member



Roy Robinson
BMW

Organization Member



James Klimtzak
CSX Transportation, Inc.

Carrier Member

Dated this 23rd day of September 2008