

**Public Law Board 7163**

Award No. 20

**Parties to the Dispute:**

**Brotherhood of Maintenance of Way Employees Division**

**IBT Rail Conference**

**and**

**CSX Transportation, Inc.**

**(C. Hostettler – Claimant)**

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

(1) The Agreement was violated when the Carrier failed and refused to bulletin and assign a vehicle operator position (to operate Truck No. 95061) on Gang 5PC4 [System File H42275605/12(05-0299) CSX].

“(2) As a consequence of the violation referred to in Part (1) above, Claimant C. Hostettler shall now be compensated for the difference in pay between what he was paid and all straight time and overtime hours he would have earned as vehicle operator on Gang 5PC4 beginning sixty days prior to November 11, 2004 and continuing until this violation ends.”

**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 a Truck Operator in the Maintenance of Way and Structures Department. He was assigned and working as a Track Inspector on the dates claimed.

The Organization argues that the Carrier violated the Agreement when it failed to post the position of Vehicle Operator on the Gang and offers Rule 1 and Rule 3 in support.

The Carrier counters that Claim should be dismissed because it has changed during the handling. The Carrier point out that the Initial Claim cites Rule 1, 19 and 39, the Appeal cites Rule 1, 3, 4, and 11, and the Submission cites Rules 1 and 3. Further, there is nothing in Rule 1, the only constant Rule citation through the Organization's handling of the Claim, that supports the requested remedy. The Carrier continues that this Board lacks jurisdiction to order the establishment of a position and that the Vehicle Operator Class does not have the exclusive right to operate a vehicle. The operation of the instant truck on a one-man gang was de minimis.

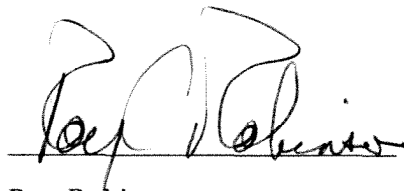
After a review of the record, and the Award citations contained therein, the Board finds that the Organization's position is not persuasive. Even disregarding the Carrier's argument that the nature of the claim changed throughout the handling of the Claim and the Appeal, the Claim still cannot be sustained. It is established in the record that the Foreman was performing track protection and drove the truck as part of that work on a one man gang. Driving the truck was a secondary task for the Foreman.

**Award:**

Claim denied.

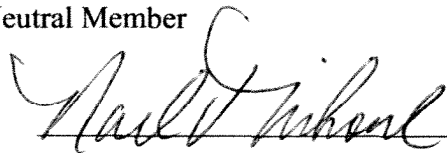


Brian Clauss  
Chairman and Neutral Member



Roy Robinson  
BMWE

Organization Member



James Klimtzak  
CSX Transportation, Inc.

Carrier Member

Dated this 3rd day of December 2009