

PUBLIC LAW BOARD NO. 7163

AWARD NO. 32

CASE NO. 32

Carrier File: 12(06-0358)

BMW File: G33860906

PARTIES TO
THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division - IBT Rail Conference
vs.
CSX Transportation, Inc.

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied

STATEMENT OF CLAIM:

- “1. The Agreement was violated when the Carrier failed and refused to bulletin a vehicle operator (fuel truck) position of Force 6GBC, Surfacing Gang on the Central East Service Lane beginning January 1, 2006 and continuing [System File G33860906/12(06-0358) CSX].
2. As a consequence of the violation referred to in Part (1) above, Claimant T. Rittenhouse shall now be paid at the respective and applicable vehicle operator rate for all straight time and overtime hours worked by Force 6GBC beginning January 1, 2006 and continuing until the vehicle operator position of Force 6GBC is advertised for bid and awarded.”

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The instant claim arose after the Carrier had certain fuel truck operation duties performed by persons holding Track Foreman and Machine Operator positions rather than bulletining and filling a Vehicle Operator position.

While it did not raise such a contention on the property, the Carrier's submission challenged the jurisdiction of this Board to reach the merits of the claim. Distilled to its essence, the Carrier contends that the instant claim constitutes a plea for injunctive relief or declaratory judgment, both of which are beyond the authority of this Board. The Carrier cited prior awards in support of its objection. See Third Division Awards 36177, 32939, and 37181.

Our review of the awards and the Carrier's objection convinces us that it lacks merit. The

instant claim alleges a violation, names a claimant, and seeks a monetary remedy until the violation is ceased. In our view, it does not fit the fact pattern of the cited awards. Accordingly, we must reject the Carrier's jurisdictional objection.

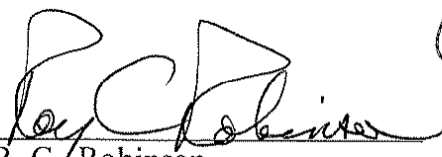
Turning to the merits, although the on-property record contains competing assertions about the amount of fuel truck operation needed on a daily basis, only the Carrier provided some evidence to support its assertions. That evidence showed that Force 6GBC moved only 2.9 miles per day on the average over a six-month time frame on its Service Lane. Thus, the evidence supports the Carrier's assertions that only one to one and one-half hours of work are needed daily. Accordingly, the only evidence in the record provides support to the Carrier's position that the Agreement does not require it to provide a full-time Vehicle Operator position for the gang.

Although the Organization cited several rules in support of the claim, it relies on Rule 1, which describes seniority classifications. The Vehicle Operator roster includes "Fuel Truck." However, the rule does not explicitly reserve vehicle operation work to the Vehicle Operator classification. Indeed, as the Carrier noted, Rule 39, Sections 2 and 3 do provide that employees outside of the Vehicle Operator classification may be assigned to operate a vehicle which requires a Commercial Driver License. As a result, we must conclude that vehicle operation work is not reserved to the Vehicle Operator classification.

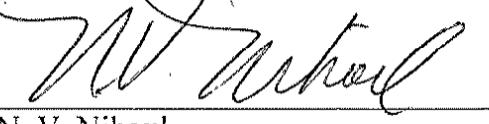
Given the foregoing considerations, we do not find that the Organization has proven a violation of the Agreement as alleged in the claim. Accordingly, the claim must be denied.

AWARD:

The Claim is denied.


R. C. Robinson,
Organization Member


Gerald E. Wallin, Chairman
and Neutral Member


N. V. Nihoul,
Carrier Member

Date: Feb 11, 2009