

PUBLIC LAW BOARD NO. 7163

AWARD NO. 36

CASE NO. 36

Carrier File: 12(06-1132)

BMWE File: D20209006

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 assigned junior employees C. Burleson, R. McDonald, C. Kyer, R. Monday, A. Thompson and D. Bowman to work vacant positions on the ballast regulator, CAT tamper, TKO, tie handler, junior tamper and spike driver, instead of Mr. A. Wilson beginning on September 8, 2006 and continuing [System File D20209006/12(06-1132) CSX].
2. The claim* as presented by Vice Chairman D. R. Albers on November 3, 2006 to Director Employee Relations J. H. Wilson shall be allowed as presented because said claim was not disallowed in accordance with Rule 24(a).
3. As a consequence of the violation referred to in Parts (1) and /or (2) above, Claimant A. Wilson shall now be compensated for ‘... the difference between Production Trackman rate \$18.47 and ‘A’ Operator rate \$20.43 for all straight time and overtime worked by the junior employees listed above, account of the above mentioned rules violations. Furthermore, the Organization is requesting the monthly attendance report for Mr. Wilson and the junior employees listed above to verify the difference in pay.’

*The initial letter of claim will be reproduced within our initial submission.”

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 record contains an unusual procedural matter in that the parties’ submissions to

this Board do not coincide regarding the Rule 24(a) violation alleged in Paragraph 2 of the Statement of Claim. According to the Organization's submission, the initial claim was submitted on November 3, 2006. When no reply was received from the Carrier, the Organization appealed the claim by letter dated January 8, 2007. That letter repeated the content of the initial claim and also alleged that the Carrier's failure to reply violated the 60-day response time limit established by Rule 24(a). Therefore, at least according to the Organization's submission, the time limit issue was raised at the Organization's first opportunity to do so on the property.

However, the Carrier asserted, in its submission to this Board, that the Organization had not raised the time limit issue on the property and was impermissibly attempting to do so for the first time before this Board. Curiously, the Carrier's submission does not contain the Organization's letter of January 8, 2007 which purportedly did raise the issue on the property. The Carrier's submission also cites Section 15 of Appendix "S," which establishes the claim handling procedure for System Production Gangs. It is undisputed that the instant claim involves such a gang. Section 15 effectively replaces the Rule 24 time limit and substitutes a time limit that does not begin to run until after the parties have conferenced the claim on the property. That conference was not held until February 21, 2007. It is clear that the Carrier's response was not untimely when measured by the Section 15 time limit provision.

Public Law Boards have no proper means of resolving the kind of discrepancies we are confronted with in the respective submissions. That said, however, the record is congruent on one further consideration. After receiving the Carrier's reply following the February 21, 2007 conference, the Organization authored a June 15, 2007 letter. This letter was the last item of the on-property record according to both submissions. The Organization's letter is entirely silent about any Rule 24(a) violation. Accordingly, under these unusual circumstances, we conclude, and so find, that the Organization decided to abandon any time limit contentions based on Rule 24(a) after discussing the claim at the February 21, 2007 conference. Given the Organization's silence about the abandonment, it is likely that the author of the Organization's submission did not realize the issue had been abandoned and unwittingly included it in the Organization's submission.

Turning to the merits, we find the claim in this matter to be without sufficient substance. It is clear from the record that the claim period was confined to the time frame from September 8 through October 12, 2006. Although the claim was not filed initially until some three weeks later on November 3, 2006, it contains no meaningful information about specific dates upon which we can determine if a junior employee received a work assignment that violated the seniority rights of the claimant. Moreover, it is undisputed that claimant was paid at the Machine Operator "A" rate of pay for many of the dates during the claim period.

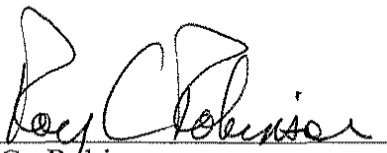
Although the Organization complains that the Carrier has failed to provide it with copies of the payroll records of the junior employees who were allegedly improperly upgraded, the Organization has not cited any Agreement provision that requires the Carrier to provide such copies

or assist the Organization in the development of its claim in any manner whatsoever.

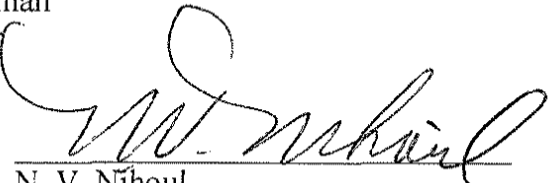
After careful review of the record herein, we must find that the Organization has not satisfied its burden of proof to establish the requisite elements of the claim with the required degree of specificity. On the record before us, therefore, we must find that the Organization has not proven that the Agreement was violated 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