

PUBLIC LAW BOARD NO. 7163

AWARD NO. 37

CASE NO. 37

Carrier File: 12(07-0009)

BMWE File: I55900406

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 Carrier violated the Agreement when it assigned overtime (operate dump truck) to Mr. T. Overton on November 5, 2006, instead of regularly assigned Vehicle Operator J. Miller [System File I55900406/12(07-0009) CSX].
2. The claim* as presented by General Chairman R. Brassell on November 7, 2006 to Mr. R. G. Mellish 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 J. Miller shall now be compensated for fifteen (15) hours at his overtime rate of 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.

Our review of the record shows the Organization's procedural contention lacks merit. The Carrier's initial response to the claim was rendered within sixty days after the claim was received by the Carrier.

Turning to the merits, it is undisputed that Mr. Overton was a backhoe operator who was called to operate his backhoe on the day in question. He used the dump truck in question for the purpose of transporting the backhoe to and from his work site. Mr. Overton held a CDL license and

was legally qualified to operate the truck over the highway. The record does not show that the truck was used to perform any other work that day.

According to the Carrier's letter dated December 10, 2007, the distance Mr. Overton drove the truck was 25.6 miles from and back to his starting location. This required only approximately one hour of total round-trip driving time. The remainder of his work time was spent operating the backhoe. For reasons not explained in the record, this letter was not included in the Organization's submission as part of the on-property record.

The Carrier justified its action as being permitted by Rule 43 - Intra-Craft Work Jurisdiction. This rule reads, in pertinent part, as follows:

Employees will be allowed to perform incidental tasks which are directly related to the service being performed and which they are capable of performing, provided the tasks are within the jurisdiction of the BMW and do not comprise a preponderant part of the total amount of time during an employee's tour of duty excluding travel time. * * *

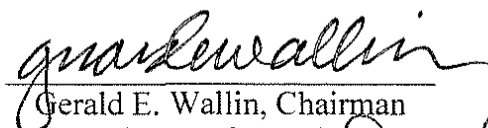
Our review of the record shows the facts to fit within the parameters of Rule 43. Of the fifteen hours of service performed by Overton, only approximately one hour was spent using the truck to transport his backhoe. Thus, the driving did not constitute the preponderant part of his total work time. Given these circumstances, it must be determined that the truck driving was truly only incidental to the operation of his backhoe.

From the foregoing discussion, 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