

PUBLIC LAW BOARD NO. 7163

AWARD NO. 40

CASE NO. 40

Carrier File: 12(06-1294)

BMWE File: 158710406

PARTIES TO
THE DISPUTE: Brotherhood of Maintenance of Way Employes
Division - IBT Rail Conference
vs.
CSX Transportation, Inc.

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained in accordance with the Findings

STATEMENT OF CLAIM:

- "1. The Agreement was violated when the Carrier failed to assign Mr. T. McCord to the foreman position (LNND0096) beginning on August 29 and continuing [System File 158710406/12(06-1294) CSX].
2. The claim* as presented by Vice Chairman A. H. Shelton on September 26, 2006 to Mr. 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 Part (1) above, Claimant T. McCord shall now be compensated for '... eight (8) straight time, and any overtime this position would have been entitled to, and any expenses applied to the position, beginning on August 29, 2006, and continuing until the violation stops at the respective straight and overtime rate of pay (Foreman - 20.44). Also, Mr. McCord's Foreman's seniority should begin on the date the award was to be posted. ***'

*The initial 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 claim involves a procedural issue that must be handled as a threshold matter. The claim dated September 26, 2006 was received by the Carrier on September 29th. When no response was received from the Carrier by November 30, 2006, the Organization appealed the matter to the next step of the claim handling process and cited the default provisions of Rule 24(a), which reads, in pertinent part, as follows:

* * * The Designated Officer, or other designated official shall render a decision within sixty (60) days from the date same is filed, in writing, to whoever filed the

claim or grievance (the employee or his union representative). When not so notified, the claim will be allowed.

(Underscoring supplied)

The Carrier did not issue a response to the claim until November 30, 2006. During the handling on the property, the Carrier admitted its response was outside of the permitted time limitation. Nonetheless, the Carrier raised a number of defenses to the substance of the claim. The Organization contends they are effectively superseded by the Rule 24(a) default language

We have carefully reviewed the Carrier's contentions. Despite being the sole bidder on the position, claimant was denied the award. While the Carrier maintained that claimant was not qualified to be awarded a Foreman position due to his lack of employment experience and training, the record shows that the Carrier nevertheless awarded claimant several temporary Track Foreman vacancies shortly after denying him the position. The record does not reveal that he received any additional training or that he was under the direct supervision of a qualified Carrier official during such work. Indeed, the record shows that claimant worked as a Track Foreman for most of the month of October 2006 without any evident problems.

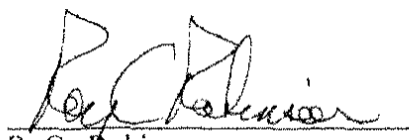
Given the foregoing circumstances, neither the on-property record nor the Carrier's submission presented any meritorious challenges to the operation of the Rule 24(a) default language or to the jurisdiction of this Board to restrict us from allowing the claim as presented. No persuasive arguments were advanced to preclude the awarding of differential pay to claimant for a suitable period of time or to preclude allowing claimant a Foreman seniority date consistent with the award date of the position bulletin.

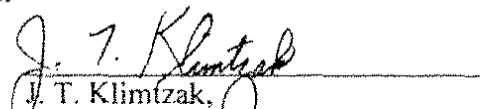
Accordingly, Rule 24(a) and the unique facts of this record compel us to award claimant a Foreman seniority date of August 29, 2006. In addition, he must be compensated for any wage differential between the Foreman rate and the pay rates he received for straight time and overtime from August 29, 2006 until the date of the Carrier's untimely response to the claim dated November 30, 2006.

AWARD:

The Claim is sustained in accordance with the Findings and must be implemented within thirty (30) days of the date of signing.


Gerald E. Wallin, Chairman
and Neutral Member


R. C. Robinson,
Organization Member


J. T. Klimtzak,
Carrier Member

Date: Oct 2, 2008