

AWARD NO. 55  
Case No. 55

Organization File No. I60100407  
Carrier File No. 2007-001329

**PUBLIC LAW BOARD NO. 7163**

PARTIES     ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,  
              )    INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
TO            )  
              )  
DISPUTE     ) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1.     The Carrier violated the Agreement when it failed to call and assign Flagging Gang 5MA9 employee R. Johns to perform overtime flagging service on September 3, 2007 and instead called and assigned junior employee L. Standridge.
2.     As a consequence of the violation referred to in Part (1) above, Claimant R. Johns shall now be compensated for sixteen (16) hours at his respective time and one-half rate of pay.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

According to the Organization, on Friday, August 31, 2007, Claimant informed his supervisor, Roadmaster Brown, that he would be available for overtime work on Saturday or Monday, which was Labor Day. It alleges that he told the supervisor to call him at his regular calling number.

At this time, Claimant was regularly assigned as a foreman/flagging on Gang 5MA9 on the Midwest Region.

On Monday, September 3, 2007, the Carrier called L. Standridge to perform flagging work in conjunction with a contractor engaged in picking up crossties between MP 372.0 and MP 379.8 on the S&NA North Subdivision. It is undisputed that Standridge, who is junior in seniority to Claimant, worked a total of sixteen hours and was compensated for such time at the overtime rate of pay.

The Organization asserts Claimant should have been called for this service as the senior employee who was available for the work and asks that he be compensated for sixteen hours at the overtime rate.

The Carrier denies that Claimant ever informed his supervisor that he would be available for overtime work that weekend or on the holiday. Further, it notes that Standridge had been performing flagging work with the crosstie contractor at the time and asserts he was the appropriate employee to call for the holiday work.

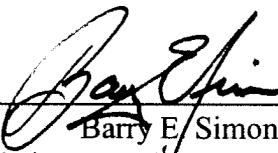
The Board notes that the Organization has not offered any proof, such as a written statement from Claimant, that he had informed Roadmaster Brown that he would be available for work. Similarly, the Carrier has offered no similar proof that Brown was not so notified. These are facts that are fundamental to the resolution of this dispute. In Award No. 39333 of the Third Division, NRAB (Ref. Wallin), the Board wrote:

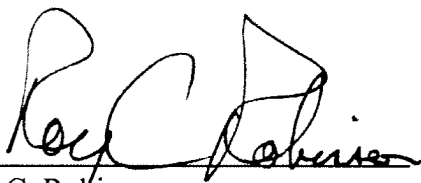
The record confronts the Board with a conflict of material fact regarding the existence of the claimed extension of the Claimant's leave of absence. It is well settled that the Board's role is essentially appellate in nature. As a result, we have no capability or authority to resolve questions of fact that are left in ambiguity by the evidentiary record.

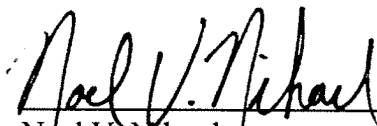
When confronted with such irreconcilable questions of fact, we have no choice but to find that the requisite burden of proof has not been met.

Inasmuch as we cannot resolve the factual dispute in this case, we must deny the claim. In reaching this conclusion, we do not address whether Claimant would have been the appropriate employee to call had it been established that he made himself available for the work.

AWARD: Claim denied.

  
Barry E. Simon  
Chairman and Neutral Member

  
Roy C. Robinson  
Employee Member

  
Noel V. Nihoul  
Carrier Member 1/26/2010

Dated: December 17, 2009  
Arlington Heights, Illinois