

PUBLIC LAW BOARD NO. 7163

AWARD NO. 64

CASE NO. 64

**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: "Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier failed to assign Claimant J. Bowling to perform overtime service operating the Grapple Truck in Owensboro, Kentucky on March 28, 29 and 30, 2008 and instead assigned junior employee P. Hughes (System File I62723208/2008-022838).
2. As a consequence of the violation in Part 1 above, Claimant J. Bowling shall be allowed forth-eight (48) hours at his respective time and one-half rate of pay."

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.

Throughout the handling of the claim on the property, the Carrier refuted the allegations of the claim and maintained, instead, that Mr. Hughes did not operate the truck. The Carrier twice pointed out that Mr. Moore, who was senior to the claimant, was the operator of the Grapple Truck.

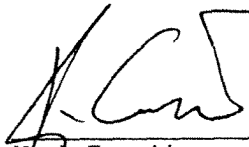
According to the Organization's post-conference report by letter dated November 21, 2008, a statement of the claimant was provided to the Carrier during the conferencing of the claim on September 16, 2008. Neither the claimant's statement nor the Organization's conference report were included in the Carrier's submission as part of the on-property record.

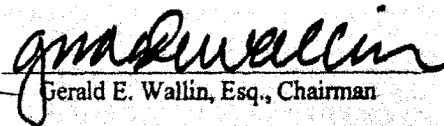
Despite the noted discrepancy in the contents of the on-property records proffered by the two submissions, it appears that the claimant's statement was timely and could have been provided to the Carrier as asserted by the Organization. That said, however, our review of the contents of the statement shows it to be insufficient to support the essential elements of the claim necessary for a sustaining award.

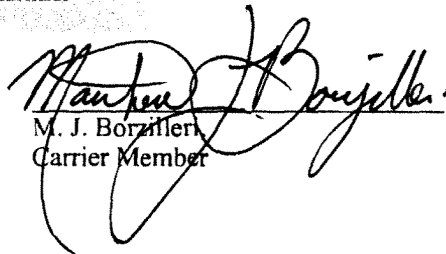
Given the inadequacy of the claimant's statement, we are left with a irreconcilable conflict of material fact. As a result, we have no choice but to deny the claim for failure to satisfy the burden of proof.

AWARD:

The Claim is denied.


Kevin Evanski,
Organization Member


Gerald E. Wallin, Esq., Chairman


M. J. Borzilleri,
Carrier Member

Date: 1-10-11