

AWARD NO. 78

Case No. 78

Organization File No. A06804507

Carrier File No. 2009-040736

PUBLIC LAW BOARD NO. 7163

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

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier called and assigned Bridge and Building (B&B) Department employe G. Rumuly, instead of Track Department employe V. Crelia, to perform Track Department work (remove/install rail and related track repair work) within the RF&P Seniority District between Mile Posts CFP 110.1 and CFP 5.3 on June 15 and 16, 2007.
2. As a consequence of the violation referred to in Part 1 above, Claimant V. Crelia shall now be compensated for seventeen and one-half (17.5) hours at his respective overtime 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.

On the dates of claim, Claimant was assigned as a Production Foreman with a floating headquarters. These two dates were, according to the Carrier, Claimant's regularly assigned rest days. The Carrier had a need to perform rail installation and renewal work after the Sperry Rail Car

Detection Vehicle had moved over the RF&P Subdivision. The Carrier utilized B&B Foreman Rumuly to perform this work. According to the Carrier, Rumuly was used because he had greater seniority than Claimant. It also says it was not required to call Claimant for this work because he was working away from the area where this work was being performed.

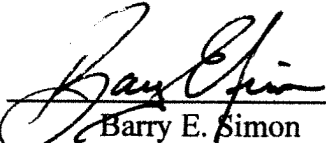
The Organization responds by asserting the work performed was clearly track work and was not B&B work. While it agrees Claimant was working on a different subdivision, it says he was still working within the same seniority district and in the same area. Finally, it points out that Claimant and Rumuly were on two different seniority rosters; Claimant was on the track roster and Rumuly was on the Bridge and Building Roster.

The Agreement requires the Carrier to call employees for work within their classification. This implies that they are also called from their respective rosters. While both employees are foremen, one is a track foreman and the other is a B&B foreman. Those are separate and distinct classes under the Agreement. Inasmuch as the work performed was track work, it belonged to the employees on the track seniority roster. Thus, Claimant should have been given the opportunity to perform this work before the Carrier utilized Rumuly. The Carrier says it called everyone in the class, but acknowledges it did not call Claimant.

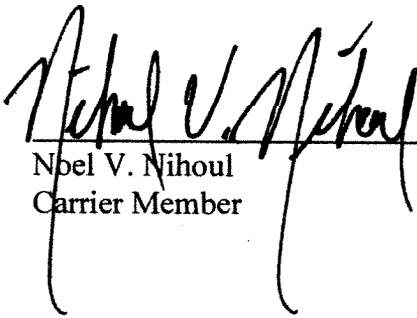
We do not find persuasive the Carrier's argument that Claimant was too far away to be called. First, the Carrier has given no indication how far away Claimant was from the work area. Secondly, it has not shown where in the Agreement there are geographical boundaries for calling employees for work within their seniority district. It appears to this Board that the Carrier utilized Rumuly because he was already on duty and could perform the work at straight time, while Claimant

would have had to be paid overtime because he was on his rest days. This does not excuse the Carrier's denial of Claimant's seniority right to the work.

AWARD: Claim sustained. Carrier is directed to comply with this Award within 45 days.


Barry E. Simon
Chairman and Neutral Member


Timothy W. Kreke
Employee Member *April 8, 2011*


Noel V. Nihoul
Carrier Member

Dated: March 28, 2011
Arlington Heights, Illinois