

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 156
Case No. 156

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

CSX Transportation, Inc.

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier allowed junior employee R. H. Seabrook to perform overtime work on SPG Gang 6XT2 on January 26 and 27, 2000, instead of senior employee D. Foy, III [System File D21301900/12(00-0129)].

2. As a consequence of the violation referred to in Part (1) above, Claimant D. Foy, III shall now be compensated for '... 8 hours and $\frac{1}{2}$, at time and one half, plus 7 hours and $\frac{1}{2}$ at double time, at (sic) for the work performed [sic] the days listed. We also request that these days be accredited towards vacation, retirement, and Updated Feb 7. Agreement, dated September 26, 1996 and again on June 1, 1999.'

FINDINGS:

This Board, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and the Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act, as amended,; and

2. That the Board has jurisdiction over this dispute.

OPINION OF THE BOARD:

Section 7 (Overtime) of Appendix "S" of the Agreement provides:

B. The right to work overtime, when

required on System Gangs, will accrue first to the incumbent of the position of which the overtime is required. If declined by the incumbent, overtime will be performed by the senior qualified employee in the System Gang indicating a desire to work overtime. If no employee desires to work overtime and overtime is required, the junior qualified employee in the System Gang involved will work the overtime.

A careful review of the record indicates that the Claimant had indicated a desire to work the disputed overtime assignment. The supervisory personnel did not refute knowing about the Claimant's interest in the work assignment. Initially, the supervisory personnel properly determined that six more senior employees than the Claimant had expressed an interest to work the assignment, which required six employees. After one of the six more senior employees decided at the last minute not to work the overtime assignment, however, the record reveals that the supervisory personnel failed to make a sufficient reasonable effort to determine whether the Claimant still wanted to work the assignment. In this regard the record reflects that the employees, including the Claimant, were on a bus when the supervisory personnel learned about the need for an additional employee to perform the disputed overtime assignment. Instead of making sure that the Claimant knew about the change in circumstances, the supervisory personnel permitted a junior employee, who had learned from the supervisory personnel about the overtime assignment while on the same bus as the Claimant, to perform the disputed overtime work.


Section 7 of the Agreement provides that the Carrier has an obligation to have the senior qualified employee who indicates a desire to work overtime perform such work. As the supervisory personnel knew that the Claimant had quite recently indicated a desire to work the disputed overtime assignment, the record reveals that the supervisory personnel easily could have and should have checked to determine whether the Claimant, who was the next senior qualified employee and who was located near the supervisory personnel, continued to have a desire to work the overtime assignment. In this way the supervisory personnel could have told the Claimant about the unavailability of one of the more senior employees at the last minute and provided the Claimant with the opportunity to renew or withdraw his stated desire to work the overtime assignment. The supervisory personnel then could have assigned the work to the Claimant in accordance with the requirements of Section 7 or, if the Claimant had decided not to work the overtime, the supervisory personnel could have complied with Section 7 by assigning the overtime work to the next senior qualified employee who had indicated a desire

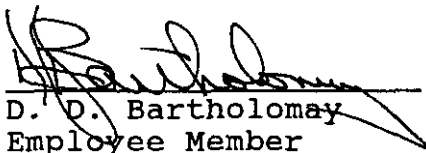
to work the overtime.

Under the specific circumstances set forth in the record, no basis exists to excuse the supervisory personnel for failing to make sure that the Claimant knew about the new opportunity for the disputed overtime assignment. The record omits any challenge by the Carrier concerning the remedy requested by the Organization on behalf of the Claimant. For these reasons the Claim must be sustained.

AWARD:

The Claim is sustained in accordance with the Opinion of the Board. The Carrier shall make the Award effective on or before 60 days following the date of this Award.


Robert L. Douglas
Chairman and Neutral Member


D. D. Bartholomay
Employee Member


J. T. Klimtjak
Carrier Member

Dated: April 30, 2004