

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 157
Case No. 157

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 Carrier violated the Agreement when it failed to call and assign Mr. A. G. Delgado for overtime service on September 19, October 1, 16 and 17, 1999 and instead called and assigned junior employees L. J. Flake, T. L. Jones and R. W. Davenport [System File A005705699/12(00-0046) CSX].
2. As a consequence of the violation referred to in Part (1) above, Claimant A. G. Delgado shall now be compensated for twenty-eight (28) hours and twenty (20) minutes' pay at his respective time and one-half rate of pay.

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:

Rule 17 (Preference of Overtime Work) indicates, in pertinent part, that:

Section 1-Non-mobile gangs:

(a) When work is to be performed outside the normal tour of duty in continuation of the day's work, the senior employee in the required job class will be given preference for overtime work ordinarily and customarily performed by them. When work is to be

performed outside the normal tour of duty that is not a continuation of the day's work, the senior employee in the required job class will be given preference for overtime work ordinarily and customarily performed by them.

(b) If additional employees are needed to assist in the work, other employees located within the seniority district will be offered\called in the order of their seniority, in the required job class.

Section 2-Mobile gangs:

When the work involved is of a specialized nature, such as production work, rail laying, tie installation, surface, etc., the gang ordinarily doing this type of work during the regularly assigned work period would be given preference for the continuation of this work outside of the regularly assigned work period with the employees in the gang being called in the order of their seniority, in the required job class. If other employees are needed to assist in the work, other production gang employees within the seniority district will be offered\called in the order of their seniority, in the required job class.

A recent decision involving the same parties addressed Rule 17. Specifically, the Third Division in Award No. 36848 (January 28, 2004) (Wallin, Ref.) indicated that:

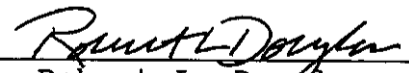
we find Rule 17 to be clear and unambiguous. Paragraph (a) does not apply because neither [employee was] . . . assigned in the required job class during the claim period. That means Rule 17(b) governed the distribution of the overtime opportunities. As written, Rule 17(b) does not discriminate based on maintenance territories or headquarters points. It clearly requires offering the work within the overall seniority district based on district seniority in the job class. Despite the likely difficulty of administering such a call system in geographically large seniority districts, that is what the Carrier has agreed to do until the Rule is appropriately modified by proper means. In this dispute, . . . the Claimant had the requisite seniority to be offered the work Thus, the Carrier violated the Agreement when the Claimant was not offered the overtime opportunities.

A careful review of the record in the present case indicates that the Claimant held a regular assignment as a Track Foreman on a mobile Service Lane Gang on the Nashville Division Seniority District as a result of his seniority on the W&A Seniority District. On the referenced dates when the Claimant was on his regular days off from the Service Lane Gang, the Carrier assigned junior employees from the mobile Service Lane Gang to perform overtime work on the Nashville Division Seniority District. The Carrier permitted the junior employees from the Service Lane Gang to perform the disputed work on their regular days off from the Service Lane Gang because the Carrier considered the Claimant's seniority on the W&A Seniority District to be inapplicable to the disputed non-mobile gang work assignments on the Nashville Division Seniority District.

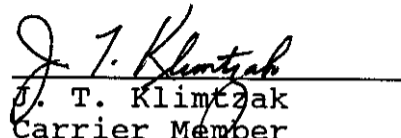
As determined by the Third Division in Award No. 36848, Rule 17, Section 1(b) provides that district seniority in the job class constitutes the basis for offering the type of work opportunities involved in the present dispute. The record confirms that the Carrier complied with this requirement by respecting the district seniority of the employees on the Nashville Division Seniority District. As the Claimant lacked such district seniority, the Claimant did not have a superior right to have an opportunity to perform the disputed work than the employees who received the disputed assignments. Any other arguments raised by the parties do not provide a basis to alter this determination under the circumstances set forth in the present record.

AWARD:

The Claim is denied.


Robert L. Douglas
Chairman and Neutral Member


D. D. Bartholomay
Employee Member


J. T. Klimtjak
Carrier Member

Dated: April 30, 2004