

Organization File: E.T.Harris  
CSXT File No.: 93425

PUBLIC LAW BOARD NO. 6468

PARTIES TO DISPUTE:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS)	)	
AND TRAINMEN	)	
	)	NMB CASE NO. 187
VS	)	AWARD NO. 187
	)	
CSX TRANSPORTATION, INC.	)	

STATEMENT OF CLAIM:

Please remove the two (2) days overhead suspension, for a period of six (6) months from Mr. Harris's record and all work records relating thereto.

FINDINGS AND OPINION

The Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. This Board has jurisdiction of the dispute here involved.

This is another dispute involving alleged failure to meet the "Minimum Availability" requirements; that is, during the period October 3, 2005 through October 30, 2005.

In addition to what has been stated in our Award No. 185, the Board should here note there is a conflict between Carrier's Policy and the working Agreement between the parties which specifically grants a displaced employee a period of 72 hours to exercise his displacement rights to another position. The record before this Board is not clear about the availability of claimant to perform service prior to the exercise of his seniority to another available position.

Once again Carrier's Availability Specialist looks only at the calendar and not at the specific facts surrounding the entire incident; that is, was the employee "available" during the 72 hours prescribed by the working agreement? Secondly, would Claimant have been called to perform service during such period if he was considered "available."

Award No. 187

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Based on the record in its entirety the Board finds that Carrier has failed in its burden to produce sufficient evidence to justify its decision that claimant was guilty of the charge against him. The claim must be sustained.

AWARD

Claim sustained. Carrier is instructed to comply with this Award within thirty (30) days of the date hereof.

F. T. Lynch  
F. T. Lynch, Neutral Chairman

H. J. Garcia  
H. J. Garcia, Carrier Member

Paul T. Sorrow  
Paul T. Sorrow, Employee Member

Award date 06/29/07