

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42764
Docket No. MW-43439
17-3-NRAB-00003-160103**

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

**(Brotherhood of Maintenance Way Employees Division –
(IBT Rail Conference**

PARTIES TO DISPUTE: (
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when, between August 5, 2014 and August 7, 2014, the Carrier assigned employee R. Shoemaker, from the Toledo West Seniority District, to install ties, work as a trackman and perform various other duties associated with track maintenance between Mile Posts OZA 82.6 and OZA 154.4 on the C&EI Seniority District and failed to assign such to Claimant L. McClanahan (System File I73411014/ 2014-175422 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant L. McClanahan shall now ‘... be compensated for twenty (20) hours at his respective straight time rate of pay.**
*****”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

It is undisputed that, on the dates of claim, the Carrier utilized an employee from the Toledo West Seniority District to perform certain work in the vicinity where the Toledo West and C&EI Seniority Districts meet. It is the Organization's contention that this work was performed on trackage that is a part of the C&EI Seniority District, where he held no seniority rights. If this were true, the claim would have merit. The Carrier, however, insists the only work performed by employee Shoemaker was actually flagging protection and was done on the Toledo West Seniority District, where Claimant has no seniority rights. Both parties have offered statements supporting their respective positions with regard to the underlying facts in this case.

From the record before the Board, it is impossible for us to reconcile this factual dispute. Accordingly, we must find that the Organization has not satisfied its burden of proving that a violation of the Agreement occurred.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of September 2017.