

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42783  
Docket No. MW-43441  
17-3-NRAB-00003-160137**

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

**(Brotherhood of Maintenance of 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 June 4, 2014 and July 17, 2014 and continuing, the Carrier failed to call or assign Claimant M. Peterson to perform overtime bridge fire watch for Rail Grinder Gang 5RG2 on the Baltimore SLWT and instead assigned such work to junior employees D. Vitullo, S. George, R. Firestone and D. Musgrove (System File A02409814/2014-173652 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Peterson shall now be compensated for one hundred, sixty-seven (167) hours at the applicable overtime 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.

The Organization contends the Carrier had determined, during the time period covered by this claim, that employees were needed to provide bridge fire watch duties in connection with work being performed by Rail Grinder Gang 5RG2 on the Baltimore SLWT. It asserts the Carrier assigned employees who are junior in seniority to Claimant to perform this work without bulletining a vacancy. It argues the Agreement requires the Carrier to bulletin any position or vacancy after twenty days.

The Carrier denies it established fire watch positions, and there was, therefore, no requirement to bulletin a vacancy. It says the fire watch work was performed by B&B employees in connection with their other regular assigned duties, and only when the rail grinder was working in the vicinity of a bridge. It contends the Agreement does not reserve this work to any single class of employee.

Assuming, arguendo, that the work belonged to track department employees, the Organization would have to prove that the Carrier had assigned employees specifically to perform fire watch work on a daily basis, rather than it being work performed by employees on an ad hoc basis in addition to their regular duties. In our review of the record before us, we cannot find that the Organization has met this burden of proof. We cannot, therefore, find that the Agreement was violated.

**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 28th day of November 2017.