

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42786
Docket No. MW-43444
17-3-NRAB-00003-160140**

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 the Carrier failed to call or assign Claimant C. Dickey to perform flagging duties between Mile Posts BI 132.1 and BI 140.2 on the Akron West Seniority District on September 9, 10, 14 and 15, 2014 and instead assigned such work to junior employee D. Jeffers (System File H42412614/2014-176448 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Dickey ‘. . . shall now be compensated for forty-four and one half (44.5) hours At his respective overtime rate of pay. Also, that all time be credited towards vacation and retirement.
***’”**

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 assigned an employee junior to Claimant to fill an assistant foreman temporary vacancy and perform flagging for System Gang S2. It insists Claimant was available to perform this work and should have been used instead of a junior employee.

The Carrier denies flagging work was performed. Rather, it says the employee was serving as an Employee in Charge and had obtained track and time authority for the tie gang that was working on his regular territory.

The Organization has the burden of showing that flagging work occurred, and it has not met that burden in this case. 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.