

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42789
Docket No. MW-43450
17-3-NRAB-00003-160178**

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 R. Mamula to perform temporary flagging duties in the vicinity of Auburndale, Florida for the T2 Tie Team on February 22, 25, 26, 27 and 28, 2014 and instead assigned such work to employe Z. Yohn (System File B16178114/2014-165804 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Mamula shall be paid forty-five and one-half (45.5) overtime hours at the respective assistant foreman flagging 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.

On the dates of claim, the Carrier assigned Foreman Z. D. Yohn to work a temporary flagging position in Auburndale, Florida. The Carrier does not deny that Claimant, who is senior to Yohn as both a foreman and an assistant foreman, had requested to fill this temporary vacancy and was available to do so. The Carrier, however, asserts Claimant was not qualified for the job. It cites a statement from Claimant complaining that the Roadmaster has refused to qualify him on his territory.

Public Law Board No. 7163, in Awards 199 and 202, addressed similar claims on behalf of this Claimant that the Carrier had used junior employees for temporary flagging work on the same territory. In Award 199, PLB No. 7163 held:

“We find the Carrier’s defense to be valid. It is not required to place an unqualified employee on a temporary vacancy that exists solely to protect the safety of the contractor’s employees, the Carrier’s employees and property, and the public. Rule 3, Section 4 (a) states:

‘A position or vacancy may be filled temporarily pending assignment. When new positions or vacancies occur, the senior qualified available employees will be given preference, whether working in a lower rated position or in the same grade or class pending advertisement and award.’ (emphasis added)

If Claimant had a legitimate complaint that the Carrier was improperly or unfairly denying him the opportunity to become qualified on this territory, his recourse could be found in other provisions of the Agreement. In the case before us, though, we must find that the Agreement was not violated.”

The same conclusion was reached in Award No. 202, and we reach the same conclusion in the case currently before us. The Agreement was not violated.

AWARD

Claim denied.

**Form 1
Page 3**

**Award No. 42789
Docket No. MW-43450
17-3-NRAB-00003-160178**

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.