

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 42792  
Docket No. MW-43454  
17-3-NRAB-00003-160183

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 on July 8 and 9, 2014, the Carrier called and assigned Track Inspector F. Proctor to perform track maintenance work such as the cutting and removal of trees off of the track and right of way on the Richmond Seniority District between Mile Posts CAB 14.0 and CAB 110.7 and failed to call, assign or give preference for such work to Claimants J. Taylor and S. Page (System File G33811114/2014-174389 CSX).
- (2) As a consequence of the violation referred to in Part (1) above, both Claimants Taylor and Page‘. . . shall each receive the same amount that was paid to Track Inspector Proctor, the amount of (12) hours, at the straight time and overtime rates of pay in effect on the dates claimed. \*\*\*”

**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.

According to the Organization, the Carrier called Track Inspector F. Proctor to perform service on an overtime basis on July 8 and 9, 2014. The Organization contends he worked from 3:00 P.M. on July 8 until 3:00 A.M. the following day. It says Proctor's duties consisted of cutting and removing trees from the track and right-of-way on the Rivanna Subdivision. It argues Claimants should have been called instead of Proctor because their regular duties include track repair and maintenance, and these are not duties that are part of a track inspector's assignment.

The Carrier explains that Proctor was used because there were reports of an unknown obstacle on the main line track that had three trains backed up. When Proctor arrived, the Carrier says he found a small tree that had fallen on the track due to a storm. According to the Carrier, he was able to remove the tree, allowing the trains to proceed. The Carrier insists Proctor was called for this work at around 4:00 P.M. and had the track opened about an hour later. The Carrier has acknowledged that Proctor remained on duty until about midnight, but asserts that he was performing other track related work that was not associated with the tree.

The Organization has offered no evidence that would contradict the Carrier's explanation of what occurred. We find that an emergency situation existed that the Carrier had to remedy immediately. It was appropriate for the Carrier to send a track inspector under these circumstances because it was necessary to assess whether there had been any damage to the track. There is no indication that Claimants were qualified to do that. We do not find that the work performed by the track inspector violated the Agreement.

### **AWARD**

**Claim denied.**

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**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.**