

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43463
Docket No. MW-43721
19-3-NRAB-00003-160499**

The Third Division consisted of the regular members and in addition Referee David P. Twomey 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. Jones to fill a temporary assistant foreman flagman vacancy and provide track protection between Mile Post CAB 199.3 and Mile Post CAB 214.1 on the Clifton Forge Seniority District on January 14 and 15, 2015 and instead assigned junior employee A. McKemy thereto (System File G31801015/ 2015-182044 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Jones shall now receive the same higher rate of pay, as well as the same eleven (11) hours of overtime, that was paid to junior employee A. McKemy, at the appropriate straight time and time and one-half 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 Carrier bulletined an assistant foreman flagman position and awarded it to employee Fred Barker. On January 14 and 15 Mr. Barker was assigned to a safety certification class, giving rise to a temporary assistant foreman vacancy. Rule 3, Section 4 dealing with temporary vacancies states in part:

“...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”

The Carrier filled the vacancy by giving preference to junior employee, Mr. A.L. McKemy. The Claimant C.P. Jones maintained superior assistant foreman-flagman seniority over Mr. McKemy. Mr. McKemy worked a total of sixteen hours of straight time and eleven hours of overtime while filling the temporary vacancy. Under Rule 3, Section 4 the senior qualified available employee, Claimant Jones, should have been given preference in filling this vacancy.

In the claims process the Carrier believed that Mr. Barker was in fact working his regular position on the claim dates, rather than attending safety training some 200 miles from his work area based on its observation that payroll codes for training days were not entered for Mr. Barker on these dates. The Organization presented a signed statement from Mr. Barker that he did not work his assigned position but was attending safety certification as directed by CSX management. No evidence whatsoever from Carrier supervision contradicts this statement.

We find the Claimant, C.P. Jones shall now receive the same higher straight time rate of pay and the same (11) hours overtime pay that was paid to junior employee A.L. McKemy, at the appropriate straight time and time and one-half rates of pay in effect on the dates claimed, because he was not given preference to and called or assigned to perform this straight time and overtime flagging work claimed.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of March 2019.