

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43466  
Docket No. MW-43895  
19-3-NRAB-00003-160681**

**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, commencing October 13, 2014 and continuing, the Carrier offered preference to and assigned junior employe C. Summers to a temporary ballast regulator operator vacancy at Mile Post 82.7 on the Nashville Division (System File I59711514/2014-179858 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Hartsfield shall be allowed all hours (straight and overtime) worked by Mr. Summers beginning on October 13, 2014 and continuing until the violation stops.”**

**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 Claimant, Mr. J. Hartsfield, was assigned and working position 5N35-067, a ballast regulator on the Nashville Service Lane. Mr. C.W. Summers was assigned to a vehicle operator position on the Nashville Service Lane. During the dates in question Mr. Summers was temporarily working on force 5N02-067, a ballast regulator, also on the Nashville Service Lane. The claim in this case on behalf of Mr. Hartsfield is for the Carrier assigning a junior man, Mr. Summers to fill the temporary vacancy operating the ballast regulator rather than giving a preference and assigning the temporary vacancy to the senior employee, Mr. Hartsfield.**

**We find that the procedures set forth in Rule 3, Section 4 of the Agreement govern how a temporary vacancy is to be filled. Had the Claimant wanted the work, he was required to displace Mr. Summers, the junior employee. The Organization's assertion that the Claimant should have been offered the work is not included in the Agreement language. See PLB 1163, Award 54 (Simon) stating that having a preference does not mean the Carrier is obligated to offer the work, as quoted below:**

**"The Provision is not specific as to whether the work must be offered to the senior employee or given to the senior employee who requests it. We note, however, that the parties specifically provided for offering the work in Rule 17 but did not in Section 4 of Rule 3. Rather, the provision merely states that "the senior qualified available employees will be given preference." In the case of furloughed employees, the provision goes on to require the Carrier to offer the senior employees the opportunity to return to work. We find the absence of the requirement to offer the work to active employees to be significant. To place that requirement into the rule, where the parties could have done so if that was their intent, would effectively amend the Agreement. This Board does not have the power to do so."**

**\*\*\***

**This Board must deny this claim.**

**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 1st day of March 2019.