

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43469
Docket No. MW-43899
19-3-NRAB-00003-160718**

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 June 29, 2015 and continuing through July 6, 2015, the Carrier offered preference to and assigned Track Inspector B. Bowman to fill a temporary assistant foreman - flagman vacancy near Mile Posts Z 182.0 and Z 210.2 on the Appalachian Division (Carrier’s File 2015-191284 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Simmons shall be compensated ‘... for (98) hours overtime and (35) hours double time at his respective overtime and double time rates 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 Claimant Mr. J. Simmons established and holds seniority in various classifications in the Carrier's Maintenance of Way Department. During the time in question in this case he was regularly assigned as a Machine Operator on the Appalachian Division. He was fully qualified to perform Assistant Foreman Flagging duties and had regularly performed such work in the past. Mr. B. Bowman also maintains seniority in the Carrier's Maintenance of Way Department. During the time in question, Mr. Bowman was working as a Track Inspector on the Appalachian Division.

Beginning on June 29, 2015 and continuing through July 6, 2015, the Carrier assigned Mr. Bowman to fill an Assistant Foreman-Flagman temporary vacancy to provide track protection near Mile Posts Z 182.0 and Z210.2 on Appalachian Division for Carrier system production forces as part of a so-called "jamboree", where all track is overhauled and repairs are made to every section and detail of this line of road. During the course of the temporary assignment, Mr. Bowman worked a substantial number of straight time, overtime and double time hours.

Question and Answer 26 to the parties' May 9, 2007 Memorandum of Agreement makes it clear that an employee may not step down in class to take a temporary flagging position. It states:

"26. Question

May an employee step down in class to take a temporary flagging position?

Answer

No, see Rule 3, Section 4(a) of the June 1, 1999 Agreement."

When Track Inspector Bowman took the flagging position, he stepped down to a position that was to be filled by an Assistant Foreman. We find that a violation of the Agreement occurred when the Carrier placed a Track Inspector on the job contrary to the prohibition in Question and Answer 26 of the May 9, 2007 MOU.

We do not find Award 54 of PLB 7163 to be relevant in this case, for it is not a matter of which Assistant Foreman had a right to the job. The violation occurred when the Carrier placed Track Inspector Bowman to fill the flagging temporary vacancy even though his regular assigned Track Inspector position was a higher rate of pay and a higher classification than the temporary flagging vacancy that he filled during the jamboree period. At that point, a claim would be valid for any available and qualified Assistant Foreman. See PLB 7163, Award No. 267 (Simon). We find that Mr. Simmons is a proper Claimant in this case. Strictly limited to facts of this particular case we direct that the Claimant be compensated for the difference between what he earned during this period and what he would have earned had he been utilized to perform this flagging work.

AWARD

Claim sustained in accordance with the Findings.

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.