

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43470
Docket No. MW-43900
19-3-NRAB-00003-160719**

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 D. Robinson to fill a temporary assistant foreman - flagman vacancy near Mile Posts Z .05 and Z 25.0 on the Appalachian Division (Carrier’s File 2015-191289 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Hensley shall be compensated ‘... for (109) hours overtime and (20) 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. Hensley 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. D. Robinson also maintains seniority in the Carrier's Maintenance of Way Department. During the time in question, Mr. Robinson 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. Robinson to fill an Assistant Foreman-Flagman temporary vacancy and provide track protection near Mile Posts Z .05 and Z 25.0 on the Appalachian Division for Carrier system production forces as part of a so-called Jamboree. During the course of the temporary assignment, Mr. Robinson 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:

"Section 8 – Flagging Work

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 Robinson 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 is 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 Robinson 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. PLB 7163, Award No 267 (Simon). We find that Mr. Hensley is a proper Claimant in this case. Strictly limited to the narrow record before us, 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.