

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43474  
Docket No. MW-44008  
19-3-NRAB-00003-170090**

**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 offered preference to and assigned junior employees to perform overtime trackman duties such as snow removal at various locations throughout Collinwood Yard, the Cleveland Terminal and the Cleveland Shortline on January 31, February 1, 2, 4, 5, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28 and March 1, 2, 3, 4, 5 and 6, 2015 (System File EmlingC.115/2015-184278 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall compensate Claimant M. Emling two hundred fifty-two (252) hours at his appropriate 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 Claimant Mr. E. Emling established and holds seniority on the Cleveland Seniority District of the Carrier's Great Lakes Service Lane. During his thirty-eight-year career on the railroad he established seniority in numerous classifications, including a Trackman seniority date of June 22, 1976. At the time of the instant dispute, he was assigned and working as a Track Inspector headquartered at Collinwood Yard. Mr. C. Ambrose also established and holds seniority on the Cleveland Seniority District of the Carrier's Great Lakes Service Lane. Mr. Ambrose held seniority in both the Trackman and the Track Foreman classifications. Mr. Ambrose was junior to Mr. Emling in Trackman classification by nearly twenty-nine (29) years.**

**On January 31, February 1, 2, 4, 5, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28 and March 1, 2, 3, 4, 5 and 6, 2015, the Carrier required overtime snow removal work at various locations in and around the Collinwood Yard. To satisfy its needs the Carrier called and offered preference to Mr. W. Misorski and Mr. C. Ambrose and the men worked a substantial amount of overtime. There is no dispute regarding the Carrier's offering of preference to Mr. Misorski as he was assigned as a Trackman and ordinarily and customarily performed the work.**

**The Carrier sets up snow duty in two to three-man teams consisting of one Track Foreman and one or two Trackmen. Track Foreman Ambrose had preference for the Foreman portion on the snow removal team. Duties including protection and supervisory work and to "Direct employees assigned under his jurisdiction" was reasonably required for a snow removal team, necessitating a Track Forman for this work. The Claimant in this case was a Track Inspector, not of the required work class for the Track Forman position involved in the case before this Board.**

**We point out that the Scope Rule describes snow removal on track structures and right of way as being work reserved to the BMWWE members. This rule does not designate the work as being the exclusive domain of any sub-department or single class of employees. Sec PLB 7163 Award 204 (Simon). We find that the Organization has not met its burden of proof in showing any rule violation in this case. We 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.