

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43558
Docket No. MW-44874
19-3-NRAB-00003-170264**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

**PARTIES TO DISPUTE: (
(Connex Railroad, LLC**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned junior employees I. Duncan and J. Green to perform overtime work in connection with night time spray truck work near Mile Post SX 966.3 beginning June 30 and continuing through July 2, 2015 and failed to offer preference for the overtime work to Mr. N. Marderosian (System File N77100115 CNX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant N. Marderosian shall ‘... be allowed twenty four (24) hours overtime at his respective 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 had established and maintained seniority in the Maintenance of Way Department for CSX Transportation, Inc. (CSX), having commenced working for CSX on or about November 14, 2012. Thereafter, the Carrier purchased certain elements from CSX, including the territory where the Claimant was working. As part of the sale, the Carrier reached an Implementing Agreement with the Organization ("Stop Gap Agreement") which was signed on March 12, 2015. The Stop Gap Agreement expressly provided that where not otherwise stated, the collective bargaining agreement (CBA) between the Organization and CSX (CSXT Agreement) would govern the Carrier's Maintenance of Way personnel until such time as the parties reached a new CBA.

On or about June 8, 2015, the Claimant began working for the Carrier in its Maintenance of Way Department and resigned from CSX on June 15, 2015. On June 30 and continuing through July 2, 2015, the Carrier required overtime services in connection with a spray truck. The carrier offered preference to and assigned I. Duncan, seniority date, March 23, 2015; and J. Green, seniority date, April 28, 2015. They accepted the overtime work and received overtime compensation. The overtime work was not offered to the Claimant.

On July 31, 2015, the Organization submitted a claim on the Claimant's behalf, contending that the Carrier's overtime assignment failed to comply with Rule 17 of the CSXT Agreement. On September 25, 2015, the Carrier denied the claim, contending that the Claimant was subject to the sixty-day probationary period. The Organization appealed the denial of October 23, 2015, arguing that the Claimant's seniority date was November 14, 2012, while the assigned employees were all junior. The Carrier declined the appeal on November 30, 2015. The Organization also requested payroll records of the alleged junior employees, but the Carrier did not provide these records.

Additional appeals and denials followed. The parties were unable to resolve the claim on-property and it is now properly before this Board for adjudication.

The Organization contends that the Claimant was a seniority employee pursuant to the Stop Gap Agreement negotiated between the Carrier and the Organization. As such, the Organization contends that the Claimant was entitled to the benefits of Rule 17 of the CSX Agreement with the Organization, which provides for preference for overtime work for senior employees, among others. The Organization contends that the Claimant was clearly the senior employee among the three but was not offered preference for the overtime work.

The Carrier contends that the Claimant was offered employment pending resolution of a proceeding occurring between the Organization and CSX regarding disciplinary action that was imposed by CSX. The Carrier contends that it only agreed to employ the Claimant on the condition that he would not be added to the Seniority Roster until this issue was resolved. As a result, the Carrier contends that the Claimant was not the more senior employee, because at the time of the overtime, the Claimant had not yet been added to the Seniority Roster.

The Carrier asserted that the Claimant's employment was subject to special provisions due to the pendency of an unresolved disciplinary matter relative to his time employed by CSX, including non-placement on the Seniority Roster. This assertion is not refuted by the Organization on this record.

The Stop Gap Agreement negotiated by the parties expressly stated that it was to "remain in effect until the parties negotiate modifications to the agreement." In addition, this Board takes notice that on April 12, 2016, the Carrier and the Organization entered into a collective bargaining agreement, effective March 30, 2015, which by its terms, "supersedes and replaces in their entirety the Implementing Agreement and June 1999 CBA, and becomes the final Collective Bargaining Agreement between the Connex and BMWED with respect to those employees employed to perform track and bridge maintenance of way work on the Line."

As a result, the claim must be denied.

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 27th day of March 2019.