

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43560  
Docket No. MW-44876  
19-3-NRAB-00003-170471**

**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 Carrier violated the Agreement when it refused to allow employee R. Arroyo to exercise seniority and displace junior employees after being displaced from his bridge tender position on December 22, 2015 and continuing (System File N77100515 CNX).**
- (2) The claim\* as presented by Vice Chairman N. Trawick by letter dated January 14, 2016 to Division Engineer N. Blaize shall be allowed as presented because said claim was not properly denied by the Carrier’s highest designated officer.**
- (3) As a consequence of the violations referred to in Parts (1) or (2) above, the Carrier shall compensate Claimant R. Arroyo eight (8) hours’ straight time and all overtime starting December 22, 2015 and continuing until the violation ceases.**

**\*The initial letter of claim will be reproduced within our initial submission.”**

**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 Carrier purchased certain elements from CSX Transportation (CSX) and 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.**

**The Claimant began working for the Carrier's Maintenance of Way Department on April 7, 2015. Until December 22, 2015, the Claimant was serving as a relief bridge tender on the Hialeah Seniority District, working 7 am to 3:30 pm. On December 22, 2015, the Claimant was displaced by senior employee Benjamin. The Claimant told General Manager Blaize and Roadmaster Dietz of his desire to displace Welder Helper Gossenlin (seniority date 6/1/2015), Backhoe Operator Green (seniority date 5/18/15), or Grapple Truck Operator Cole (seniority date 6/17/15) from their positions. The Carrier did not allow the Claimant to displace into any one of the three positions and he entered a furlough state.**

**On January 14, 2016, the Organization filed a claim on the Claimant's behalf. 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 and was entitled to the benefits of Rules 3, 4, and 24 of the CSXT Agreement with the Organization. The Organization contends that the Claimant was clearly the senior employee but was furloughed in lieu of displacing one of the junior employees.**

The Carrier contends that the Claimant was not senior and was not qualified to perform the functions of their positions. The Carrier contends that the Claimant was only entitled to displace an employee in a lower job classification and the three positions that the Claimant sought to displace had higher rates of pay. Further, the Carrier contends that the Organization has failed to show that the Claimant was qualified to perform any of the positions. The Carrier contends that it has the sole right to determine qualifications.

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.