

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43561  
Docket No. MW-44877  
19-3-NRAB-00003-170472**

**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 employees I. Duncan and C. Johnson to exercise seniority and displace junior employees following the abolishment of their positions on December 15, 2015 and continuing (System File N77100615 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) and/or (2) above, the Carrier shall compensate each Claimant for eight (8) hours’ straight time and all overtime starting December 15, 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 common carrier 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.**

**Claimants Duncan and Johnson began working for the Carrier’s Maintenance of Way Department on March 23, 2015. They established and maintained seniority in various classifications, including welder, welder/helper, and trackman.**

**On October 5, 2015, the Carrier gave notice to the Claimants of their disqualification from their welder and welder/helper positions. Thereafter, the Carrier continued to work them on a temporary or extra basis, but not as welders or welders/helpers. On December 15, 2015, the Carrier informed the Claimants that it had no more need of their services. The Claimants requested to displace junior employees. The Carrier denied the requests, stating they did not hold qualifications to perform the duties of the requested positions, and they did not hold prerequisite seniority to displace the identified employees. The Claimants’ requests to displace junior employees at that time were denied and they entered into a furlough state.**

**On January 14, 2016, the Organization filed a claim on the Claimants’ 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 this claim, having been filed pursuant to the Stop Gap Agreement, is governed by that document. As such, the Organization contends that the Claimants were the seniority employees pursuant to the Stop Gap Agreement**

and were entitled to the benefits of the CSXT Agreement with the Organization, which provides that an employee who is displaced may exercise seniority to a position for which he is qualified, among other things.

The Carrier contends that Side Letter #24 does not govern this dispute, but even if it did, the Claimants were disqualified and relieved of their welding duties on October 5, after which they had ten days to request to displace junior employees. However, the Carrier contends, the Claimants' request was not made until December 15, long after they had surrendered their seniority.

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.