

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43934
Docket No. MW-44654
20-3-NRAB-00003-180129**

The Third Division consisted of the regular members and in addition Referee Meeta A. Bass 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 assigned Section Machine Operator K. Martin to perform overtime work (track inspections) on the Detroit Seniority District of the Chicago Division on June 5, 2016 and June 18, 2016 instead of calling and assigning Track Inspector J. Krieger thereto (System File H46406216/2016-208039 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Krieger shall be compensated for fourteen (14) hours at his respective overtime 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.

By letter dated June 28, 2016, the Organization submitted a claim to the Carrier alleging that the Carrier violated the Agreement when the Carrier assigned a machine operator to perform track inspection duties. On August 22, 2016 the Carrier denied the claim. The Claim was conferenced on November 14, 2016. The parties were unable to resolve the dispute and the claim was advanced. The Claim is before this Board for final resolution.

The Organization contends that the Carrier violated the seniority rights and preferences afforded to the Claimant. The Organization contends that the Claimant was senior to the claimed against employee, the Claimant was assigned to a track inspector position headquartered within the claim district, and the claimed work was track inspection work ordinarily and customarily performed by track inspectors. The Claimant was qualified for the position. The Organization contends that the Carrier's defenses are without merit. The Organization maintains that due to the Carrier's actions, the Claimant was denied worked opportunities. It is the position of the Organization that the claim should be sustained.

The Carrier contends that the Organization failed to show the Carrier violated any rules or agreement. The Carrier asserts that the Claimant is not qualified on the claimed work. The Carrier has established a system wide-practice regarding preference for overtime to employees working on a Roadmaster's assigned territory or location before going to a roster and calling employees that currently report to other Roadmasters. The Carrier asserts that this practice is supported by contemporaneous notes provided from the Joint Rules Committee Meeting in 2010. The Carrier cites arbitral precedents to support its position. Lastly, the Carrier maintains that the Organization has failed to meet its burden of proof, and the claim should be denied.

Applicable Agreement Provisions

The pertinent provisions of the Agreement Between CSX Transportation, Inc. and Its Maintenance of Way Employees Represented by the Brotherhood of Maintenance of Way Employees, effective June 1, 1999 are Rule 1, Rule, 3, 4, 11 and 17. The Rules are incorporated herein as if fully rewritten.

The Board has carefully reviewed the record to address the Organization's concerns of a violation of the seniority rights and preference for overtime of the Claimant. It is noted that this issue is not a case of first impression with this Board. See,

Simon Awards. The Board concurs with the analysis of Arbitrator Simon and finds no reason to distinguish these awards from the facts presented in this claim. The Board therefore finds that the Organization has failed to meet its burden of proof. The claimed against employee was properly assigned overtime in accordance with Rule 17 and the system -wide practice regarding overtime practice.

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 5th day of March 2020.