

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43939
Docket No. MW-44677
20-3-NRAB-00003-180151**

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 Carrier violated the Agreement when it improperly hired and assigned Mr. R. Connolly as a Bridge and Building (B&B) Department foreman commencing on November 16, 2015 and continuing up to and including January 14, 2016 (System File B09902016/ 2016-200741 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Morgan shall be compensated all hours worked by Mr. R. Connolly, including but not limited to straight time and overtime hours, at the respective B&B Department foreman’s rate of pay, along with all credits towards vacation and retirement.” ”**

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.

On January 14, 2016 the Organization filed this claim on behalf of the Claimant alleging the Carrier hired and directly assigned the claimed against employee as a Bridge and Building Department Foreman with work Group 6A80. The employee claimed against was a new hire at the time of incident and maintained no Maintenance of Way seniority. He did not enter services as a trackman nor did he complete a trackman's probationary period. On March 14, 2016, the Carrier denied the claim and stated no there was no violation of the agreement. The parties discussed the claim at conference on November 15, 2016. On January 31, 2017, the Carrier denied the Organization's appeal. The parties were unable to resolve this matter and the claim was advanced. This matter is before this Board for a final resolution of the claim.

The Organization contends that Rule 4, Section 1 states in pertinent part that: "New hires will enter service in the Trackman class. After completing the probation period as provided in Rule 2, such new hires, will be permitted to bid positions in higher classes gain other seniority as provided in Rule 3..." The Organization argues that the language is mandatory, and not optional; a new hire must serve as a trackman and compete a trackman probationary period before bidding into the subject foreman position. The Organization asserts that the Carrier violated agreement when it hired and assigned the employee claimed against to the foreman position. The Organization asserts that there is a direct violation of Rule 4, Section 1. The Organization also contends that even though the Claimant did not displace into the position, the remedy should be the "standard remedy in arbitration" due to the violation of the Agreement. The Organization argues that it is entitled to progress claims and grievances so as to protect the integrity of the Agreement. The Organization cites arbitral precedent mandating that CSXE pay BMW-represented employee as if they had done the work in question. 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 agreements. The Carrier argues that the Agreement does not require that new employees must hire into the Track Department nor does the agreement require that employer must have at least one year's seniority to qualify for a foreman position. The Organization asserts that the Side Letter 14 was cancelled, and the original language of the Article does not state said restrictions. The Carrier asserts that Rule 4 Language was abolished by Agreement 12-010-11, executed March 1, 2011. The Carrier

maintains that the Organization is reliant upon language that is not in existence at the time of the initial claim. The Carrier argues that the Organization failed to establish a practice of assigning employees with at least one year's seniority to positions not requiring FRA qualifications. The Carrier maintains that the company has the right to establish job requirements. Further, the Carrier contends Rule 1. Seniority Classes, addresses primary duties of classes within the craft, and does not function to reserve duties to any particular class. The Carrier asserts that Rule 3, Rule 11 and Rule 17, and MOA 2 are not applicable. The Carrier argues the Organization failed to describe any violation of the same. The Carrier maintains that the Organization has failed to meet its burden of proof. Lastly, it is the position of the Carrier that the grievance should be denied in its entirety.

Applicable Agreement Provisions

The pertinent provisions governing this dispute in the Agreement Between CSX Transportation, Inc. and Its Maintenance of Way Employees Represented by the Brotherhood of Maintenance of Way Employees (hereinafter "Agreement"), effective June 1, 1999 are Rules 1, 3, 4, 11, and 17 of the June 1, 1999 Agreement, the September 1, 2009 Memorandum of Agreement, and the March 1, 2011 Memorandum of Understanding are hereby incorporated herein as if fully rewritten.

After review of the submissions, letters, documents, applicable provisions of the Agreement and other matters of record, the Board finds that the crux of the Organization's argument arises from the alleged violation of Rule 4 and Side letter 14. It is not disputed that the Carrier assigned a new hire into the foreman position. Although the Organization is correct in its reading of Side Letter 14, the March 1, 2011 Memorandum of Understanding cancelled Side Letter No. 14 of the June 1, 1999 Collective Bargaining Agreement, and further states that "the original language of Rule 4, Section 1 (A) of the June 1, 1999 Collective Bargaining agreement between CSXT and BMWE shall be restored to its original content and application." Similar restrictions are not found in the original language of Article 4. Thus, the Organization has failed to meet its burden of proof.

AWARD

Claim denied.

**Form 1
Page 4**

**Award No. 43939
Docket No. MW-44677
20-3-NRAB-00003-180151**

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.