

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43943
Docket No. MW-44688
20-3-NRAB-00003-180175**

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 assigned junior employe M. Nelson to a temporary assistant foreman - flagman vacancy starting on May 31, 2016 and continuing (System File B16003416/ 2016-208045 CSX).**
- (2) The Carrier further violated the Agreement when it failed to advertise the assistant foreman - flagman position.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant R. Flatt shall now be compensated at the respective overtime and/or straight time rate of pay for the number of hours worked by the junior employe and that the position also be immediately advertised by bulletin and awarded to the senior bidder.” ”**

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 the claim on behalf of the Claimant alleging the Carrier violated the Agreement when the Carrier assigned flagging duties to the employee claimed against and failed to advertise the position. By letter dated August 26, 2016, the Carrier denied this claim. The claim was conferenced on December 21, 2016, with no resolution. The claim was advanced and is before this Board for resolution.

The Organization contends that the Carrier violated the Agreement when it assigned junior B&B Department employees to perform assistant foreman-flagman duties. The Organization argues that the Carrier did not give the Claimant any preference for the work but instead arbitrarily selected employees and assigned them to do the work. The Organization also contends that the Carrier violated the Agreement when it failed to properly advertise the subject flagging position. The Organization argues that after the twenty (20) days work commenced, the Carrier failed to advertise the position as required by Rule 3, Section 3(a). Moreover, the Organization argues that the Carrier's defenses are without merit. It is the position of the Organization that the claim should be sustained.

The Carrier contends that the Organization failed to show a violation of any rules or agreements. The Carrier asserts that there is no violation of Rule 3, Section 3. The Carrier argues that there was no vacancy. The claimed against employee was performing duties in association with his bid in Assistant Foreman position. The Carrier further contends there is no obligation to advertise the position and maintains there is no violation of the Agreement. Moreover, the Carrier contends that the Organization failed to cite any rule or agreement that an Assistant Foreman Flagman was required. The Carrier contends that MOA 1, Section 8 is not applicable. It is the position of the Carrier that the claim should be dismissed.

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 Employee, effective June 1, 1999 are 2007 Memorandum Agreement, MOA #1,

the Scope Rule, Rule 1, 3, 4 and 24 (i) and Circular No 1. These rules and agreements are incorporated herein as if fully rewritten.

The Board has carefully reviewed the record and finds that the Organization has failed to meet its burden of proof. The Board also finds that although the Organization made specific documents request, the Organization had access to the Carrier's system that administers and tracks assignments, job advertisement, and awards, to refute the defense raised by the Carrier. The Board finds that no vacancy existed, and the claimed employee displaced into the position and was working his assignment.

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.