

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43945
Docket No. MW-44690
20-3-NRAB-00003-180191**

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 the Carrier improperly offered preference for a temporary vacancy to junior employee J. Pulver commencing on June 6, 2016 and continuing and failed to offer any preference for such to senior employee S. Sagatis (System File S Sagatis 003/2016-208578 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall compensate Claimant S. Sagatis for three and one-half (3.5) hours daily, Monday through Friday, at the overtime rate of pay commencing June 6, 2016 and continuing.”**

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 Organization submitted a claim to the Carrier alleging that the Carrier violated the Agreement when the Carrier assigned a junior employee to a temporary vacancy running a 707 for contractors. The Carrier denied the claim. The claim was conferenced and the parties were unable to resolve the dispute. The claim was advanced and is before this Board for final resolution.

The Organization contends that the Agreement was violated when the Carrier offered preference to and assigned the junior claimed against employee to fill a temporary vacancy (track protection for contractors) in the Mohawk Seniority District of the Albany Service Lane in violation of Rule 3. The Organization asserts that the Claimant maintained superior seniority and was qualified, willing and able to perform the work. The Carrier argues that the record establishes that the Claimant notified his supervisor of his desire to fill the temporary vacancy once he observed the position and work limits described in the dispatcher's bulletin, and his request was denied without preference. The Organization also contends that the Carrier's alleged defense, a bided-on position, is disingenuous; the Organization points out that the defense was not raised in the Carrier's earlier letter which asserted the Claimant's failure to displace the junior employee. The Organization also argues that the Carrier failed to provide any relevant documentation to support its position, i.e. job bulletin, or award notice. The Organization opines that the 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 the Carrier violated any rules or agreement. The Carrier argues that the claimant against employee was performing track protection as a function of his bid-in Foreman position, there was no temporary vacancy. The claimed against employee was performing work as Employee in Charge which is customarily assigned to bid-in Foreman positions. The Carrier also contends that the Organization failed to cite any rules that require the Carrier to advertise or offer a vacancy for track protection under 707 authority. The Carrier asserts that Rule 707 governs track protection, including the duties and responsibilities of the EIC, and 707 Authority does not require the assignment of a separate position for flagging. Further, the Organization contents that the Claimant could have, but did not, exercise his right to displace the claimed against employee. Moreover, the Carrier contends the information requests must be material and germane to the claim and argues that the information was readily available to the Organization. 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 provision 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 the Scope Rule, Rule 3, 4, 17 and 24. These rules are incorporated herein as if fully rewritten.

The Board has reviewed the record. The Board finds that the Organization has failed to meet its burden of proof. The Board finds that no vacancy existed. The Board concurs with the Carrier that the claimed against employee was performing track protection as a function of his bid-in Foreman position.

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.