

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44042  
Docket No. MW-44101  
20-3-NRAB-00003-170188**

**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: (**  
**(CSX Transportation, Inc.**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier failed to call or assign Claimant L. Scott to perform flagging duties in the vicinity of Mile Post CFP 105.0 on the Baltimore Division on September 19, 2015 and instead assigned such work to employee D. Tucker (System File A06814515/2015-194786 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant L. Scott shall ‘\*\*\* receive the same amount of overtime hours (15) ... at his appropriate rate of pay in effect on the date claimed.’”**

**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 Claimant maintains seniority in various classifications in the Maintenance of Way Department, including as an assistant foreman. At the time of these events, the Claimant held the track welder classification and had performed flagging duties in the past.

Employee D. Tucker also maintains seniority in various classifications in the Maintenance of Way Department, including as an assistant foreman. Employee Tucker was junior to the Claimant in the assistant foreman classification.

On Saturday, September 19, 2015, a rest day for the Claimant and Employee Tucker, the Carrier required overtime track protection duties in connection with Maintenance of Way work. The Carrier offered and assigned Employee Tucker to the disputed work, who worked a total of fifteen (15) hours of overtime performing assistant foreman flagman duties.

The Organization filed a claim, asserting that the parties' Agreement had been violated by the Carrier's decision to assign overtime track protection duties to the junior employee. The Carrier denied the claim. The parties were unable to resolve the dispute on-property and the claim is now properly before this Board for final adjudication.

The Organization contends that the Claimant was entitled to the overtime work by virtue of his superior seniority in the job classification, as provided in Rule 17. The Organization contends that there is no dispute that the work took place on a rest day for both employees and that the Claimant was the senior employee in the required classification.

The Carrier contends that the assignment was a one day temporary vacancy governed by Rule 3, § 4, not Rule 17. The Carrier contends that it properly assigned the work to the junior employee as the Claimant was regularly assigned to a higher rated position and would not be given preference for the position.

In a rules case, the Organization bears the burden of proof. Here, it has not offered sufficient evidence that the assignment was overtime work governed by Rule 17. As no violation of the Agreement has been shown, 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 18th day of June 2020.**