

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44044
Docket No. MW-44104
20-3-NRAB-00003-170197**

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 assigned junior employees L. Smith and I. Hewitt to work with Welder Team 5A60 at Boyles Yard near Mile Post 000388.5 on April 7, 8, 9, 10, 13, 15 and 16, 2015 instead of assigning Mr. M. Crusoe thereto (System File B10182515/2015-187312 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Crusoe shall be compensated fifty-six (56) hours' straight time and twenty-three (23) hours' overtime at the respective 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.

The Claimant maintains seniority in the Carrier's Maintenance of Way Department. Employees L. Smith and I. Hewitt have also established and maintain seniority in the Carrier's Maintenance of Way Department. There is no dispute that their seniorities are junior to the Claimant's on the S&NA South Seniority District.

On April 7, 8, 9, 10, 13, 15, and 16, 2015, the Carrier required welder helper services on Welder Team 5A60 near Mile Post 000388.5 in the Boyles Yard to make field welds and grind switch points. Based on this need, the Carrier assigned junior employees Smith and Hewitt to perform this work. The Carrier did not offer such overtime work to the Claimant.

The Organization filed a claim for 56 hours of straight time and 23 hours of overtime on the basis that the Carrier assigned and upgraded junior employees to work the Welder Helper position, rather than the Claimant. The Carrier denied the claim, asserting that the position required FRA certification and a valid CDL, and the Claimant had neither qualification. 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 Carrier violated the parties' Agreement when it offered preference to and assigned junior employees to fill a temporary welder helper vacancy. The Organization contends that the Claimant, the senior employee, was qualified and able to perform the work. The Organization concedes that the Claimant did not possess a CDL but asserts that neither of the junior employees possessed one at the time the temporary vacancy was worked.

The Carrier contends that there was no violation of the Agreement, because Rule 3, § 4, makes clear that a senior employee must be qualified and available to be given preference to the position. The Carrier contends that it has the right to establish qualifications and the Claimant was not qualified due to not being FRA qualified and not holding a CDL. The Carrier contends that the junior employees were qualified at the time the work was performed.

The Carrier further contends that the claim must be denied because the Claimant was not available to fill the temporary vacancy. The Carrier contends that the Claimant was fully employed at the time of the temporary vacancy and thus, suffered no loss of earnings.

The claim is controlled by Rule 3, § 4 of the parties' Agreement:

“RULE 3 - SELECTION OF POSITIONS

Section 4. Filling temporary vacancies

- (a) A position or vacancy may be filled temporarily pending assignment. When new positions or vacancies occur, the senior qualified available employees will be given preference, whether working in a lower rated position or in the same grade or class pending advertisement and award.”

The Organization has demonstrated that the Claimant was the senior employee and that he was not given preference for the temporary vacancy. However, from its initial denial of the claim, the Carrier has asserted that the Claimant was not qualified for the assignment. The Organization challenged the Carrier's claim on the basis that documents provided showed that neither of the junior employees possessed a CDL at the time of the disputed work, although they did have the endorsement at a later date. The Organization argues that there was no difference between the qualifications of the junior employees and the Claimant.

The Carrier responded in on-property correspondence that the junior employees held CDL certification and the date in the record reflects only the implementation date of a new tracking system. Thus, the Organization has offered no compelling evidence to refute the Carrier's claim that to be qualified for this vacancy, the employee must be FRA qualified and must possess a CDL. The Organization concedes that the Claimant is not FRA qualified and does not possess a CDL. Therefore, the Organization has failed to demonstrate that there was a violation of the Agreement.

AWARD

Claim denied.

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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.