

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45436
Docket No. MW-48039
25-3-NRAB-00003-230349**

The Third Division consisted of the regular members and in addition Referee Jeanne Charles 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 assigned Track Welder R. Mendez to fill a track foreman vacancy working with the teams in Barr Yard on the Chicago Service Lane Work Territory beginning on September 10, 2021 and continuing and failed to offer any preference for such to senior qualified employee K. Jones (System File CHI805921/21-38168 CSX).**
- (2) The Carrier violated the Agreement when it improperly assigned Track Welder R. Mendez to fill a track foreman vacancy working with the teams in Barr Yard on the Chicago Service Lane Work Territory beginning on September 16, 2021 and continuing and failed to offer any preference for such to senior qualified employee K. Jones (System File CHI806321/21-47661).**
- (3) The Carrier violated the Agreement when it improperly assigned Track Welder R. Mendez to fill a track foreman vacancy working with the teams in Barr Yard on the Chicago Service Lane Work Territory beginning on September 17, 2021 and continuing and failed to offer any preference for such to senior qualified employee K. Jones (System File CHI806421/21-93745).**
- (4) The Carrier violated the Agreement when it improperly assigned Track Foreman A. Zavala to fill a Machine Operator ‘A’ vacancy working in Barr Yard on the Chicago Service Lane Work Territory**

beginning on September 15, 2021 and continuing and failed to offer any preference for such to senior qualified employee K. Jones (System File CHI806521/21-32335).

- (5) The Carrier violated the Agreement when it improperly assigned Track Welder D. Casarez, Jr. to fill a track foreman vacancy working with the teams in Barr Yard on the Chicago Service Lane Work Territory beginning on September 15, 2021 and continuing and failed to offer any preference for such to senior qualified employee K. Jones (System File CHI806621/21-22782).
- (6) The Carrier violated the Agreement when it improperly assigned Track Welder D. Casarez, Jr. to fill a track foreman vacancy working with the teams in Barr Yard on the Chicago Service Lane Work Territory beginning on September 17, 2021 and continuing and failed to offer any preference for such to senior qualified employee K. Jones (System File CHI806721/21-85715).
- (7) As a consequence of the violation referred to in Part (1) above, Claimant K. Jones shall now be compensated ‘... thirteen (13.0) hours at the proper rate of pay and that all time be credited towards vacation and retirement for the Claimant. ***’
- (8) As a consequence of the violation referred to in Part (2) above, Claimant K. Jones shall now be compensated ‘... seventeen (17.0) hours at the proper rate of pay and that all time be credited towards vacation and retirement for the Claimant. ***’
- (9) As a consequence of the violation referred to in Part (3) above, Claimant K. Jones shall now be compensated ‘... fourteen and one-half (14.5) hours at the proper rate of pay and that all time be credited towards vacation and retirement for the Claimant. ***’
- (10) (10) As a consequence of the violation referred to in Part (4) above, Claimant K. Jones shall now be compensated ‘... thirteen and one-half (13.5)) hours at the proper rate of pay and that all time be credited towards vacation and retirement for the Claimant. ***
- (11) (11) As a consequence of the violation referred to in Part (5) above, Claimant K. Jones shall now be compensated ‘... fifteen and one-

half (15.5) hours at the proper rate of pay and that all time be credited towards vacation and retirement for the Claimant. ***'

- (12) As a consequence of the violation referred to in Part (6) above, Claimant K. Jones shall now be compensated '... sixteen (16.0) hours of overtime, at his respective overtime rates of pay and that all time be counted towards vacation and retirement for the Claimant. ***''

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 K. Jones ("Claimant") established and maintained seniority within the Carrier's Maintenance of Way Department at the time of this dispute. At all relevant times, Claimant was working as a trackman. The claim cites violations of Rules 1, 3, 4, 11 and 17, contained in the operative collective bargaining agreement ("Agreement") dated June 1, 1999, between the parties. Rule 1 governs seniority classes. Rule 3 governs the selection of positions and Rule 4 sets forth how seniority is determined. Rule 11 sets forth the agreement with respect to overtime pay and procedures. Finally, Rule 17 governs the preference for overtime work assignments.

At issue is whether the Carrier violated the Agreement when it assigned another less senior employee to perform temporary Track Foreman and Machine Operator 'A' duties on the Chicago Service Lane Work Territory instead of Claimant on the various dates referenced in the claim.

The Organization contends that Claimant was the most senior qualified employee for the assignment. The Organization argues this is supported by the facts that (1) he

holds the requisite seniority in the track foreman classification; (2) the subject positions do not require a CDL and the jobs are advertised accordingly; (3) he was qualified, ready, willing and available to fill the subject positions and has done so numerous times over sixteen (16) years; and (4) the Carrier is purposely disregarding his seniority in retaliatory fashion due to filing claims against it.

Conversely, the Carrier maintains that the Claimant was not qualified to fill the vacancy in question. Specifically, the Claimant was not qualified on the physical characteristics of the tracks in question, meaning he could not get track time, and he does not possess a CDL.

By letter dated November 5, 2020, the Organization filed a timely claim on behalf of the Claimants. The claim was properly handled by the Parties at all stages of the appeal up to and including the Carrier's highest appellate officer. The matter was not resolved and is now before this Board for final adjudication.

In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. As the moving party, it was the Organization's responsibility to meet its burden to prove by a preponderance of evidence that the Carrier committed the alleged violation(s). After careful review of the record, the Board finds the Organization has not met its burden.

There is insufficient record evidence to establish Claimant was qualified for the position. Rule 3, Section 4 regarding the filling of temporary vacancies states, in relevant part, "...[w]hen 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." According to the Carrier's rules, there is a specific process for qualifying an Employee in Charge. Rule 804.1 provides:

Do not perform service as an employee-in charge until qualified as an employee-in-charge and:

- 1. Completing a trip over the territory in the previous 36 months or being re-qualified (sic) on the territory, and**
- 2. Attending an engineering rules class and successfully completing all requirements:**

1. Procedures governing good faith challenges,
2. Establishment of working limits,
3. Establishment of train approach warning, and
4. Procedures identifying qualification on physical characteristics of the territory.¹

While we note that the CDL requirement advanced by the Carrier is absent, there is no competent evidence that Claimant met the qualifications referenced above. The statements from co-workers do not substantiate that Claimant was properly qualified. It is true that the statement from Joe Monaco claims that no CDL was required when he performed the Yard Forman position for over a year which tends to support the Organization's view that no such requirement exists. However, both statements imply that Claimant had not made the necessary number of qualifying trips. But if he did, the statements do not establish when these trips were completed such that the 36-month window was met. Qualifying trips aside, Rule 804.1 also requires attendance at and successful completion of an engineering rules class. There is no evidence that Claimant completed the class. In sum, the record is devoid of sufficient evidence to substantiate that Claimant was qualified for the Track Foreman position. Therefore, the seniority provisions were inapplicable for the temporary assignments in this claim. Accordingly, 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 13th day of February 2025.

¹ Organization's Submission at 20-21.