

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD No. 7163**

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| Brotherhood of Maintenance of Way |) | | |
| Employees Division, IBT Rail Conference |) | | |
| |) | | |
| vs. |) | Case No. | 114 |
| |) | Award No. | 114 |
| |) | | |
| 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 and assign Foreman B. Hendrickson to perform flagging work for a contractor on the CC Subdivision beginning on August 2, 2010 and continuing through August 19, 2010 and instead called and assigned junior employee L. McGuire (System File G35757010/2010-080444).
2. As consequence of the violation referred to in Part (1) above, Claimant B. Hendrickson shall now be compensated for eight and one-half (8.5) hours at his respective foreman overtime rate of pay."

[BMWE Submission at 1]

Findings:

Public Law Board No. 7163, upon the whole record and all the evidence, finds that (1) the parties to this dispute are Carrier and Employees within the meaning of the Railway Labor Act as amended, (2) the Board has jurisdiction over this dispute, and (3) the parties to the dispute were accorded due notice of the hearing and participated in this proceeding.

This claim was timely presented by the Organization and responded to by the Carrier throughout claim processing including conference. With the unresolved claim handled in the customary and usual manner, the record established by the parties is now before the Board for adjudication.

Claimant is assigned to a Foreman position (B&B Department) for Mobile Gang 6C83 in the KD Seniority District for the Appalachian Region. The claimed-against employee also is assigned to a Foreman position (B&B Department) on Mobile Gang 6C71 in the same seniority district and division as the Claimant.

During the period of August 2, 2010 through August 19, 2010 the Carrier assigned a junior employee to Claimant flag work on an overtime basis at a Carrier-owned bridge on the CC Subdivision.

The Carrier's assignment of a junior employee, BMWE claims, is a breach of Rules 3, 4, 11 and 17 and Memorandum of Agreement (MOA) at Section 8, Rule 3, Section 4 because overtime preference extends to Claimant, the senior employee. Rule 17, Section 2 states that the senior

employee in the required job class within the seniority district will be offered and/or called for overtime work when the work is performed outside the normal tour of duty.

Additionally MOA Section 8, Rule 3, Section 4 provides that when a new or vacant position is filled “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.”

BMWE argues a breach of MOA Rule 3, Section 4 because the Carrier assigned the junior employee in the Foreman job class to perform lower classified work but compensated the junior employee at the Foreman rate.

In denying the claim the Carrier states that Rule 17, Section 2 governs this matter. That is,

...the gang ordinarily doing this type of work during the regularly assigned work period would be given preference for the continuation of this work outside of the regularly assigned work period with the employees in the gang being called in the order of their seniority in the required job class. *If other employees are needed to assist in the work, other production gang employees within the seniority district will be offered/called in the order of their seniority, in the required job class.*

[Emphasis added.]

Since there was no Assistant Foreman – Flagman available to continue this work outside of that employee’s regularly assigned work period the Carrier states that it offered the work to “other production gang employees within the seniority district...in the order of their seniority, in the required job class” which was the junior employee.

The Board observes that the MOA Section 8 – Flagging Work established the Assistant Foreman – Flagman class within the B&B Department and the seniority for that class is “based on Assistant Foreman seniority” in the B&B Department.

The claimed flag work is covered by MOA Section 8 A.2:

When flagging work is required in connection with B&B Department work or other work that holds the potential to undermine the integrity of structures such as bridges or buildings an Assistant Foreman – Flagman from the B&B Department shall be assigned in accordance with Rule 3, Section 3 or 4, as applicable.

BMWE asserts in the claim that the Carrier’s assignment of the junior Foreman to perform flag duties breached MOA 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[.]

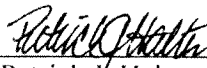
Based on MOA Rule 3, Section 4 BMWE argues that Claimant should have been offered this temporary vacancy and not the junior employee.

The Board concludes that the required job class for this required flag work is Assistant Foreman – Flagman and the junior employee has Assistant Foreman – Flagman seniority and the Claimant does not purport to have such seniority.

Without Assistant Foreman-Flagman seniority, Claimant was not available when “other production gang employees within the seniority district [were]...offered\called in the order of their seniority in the required job class” leading to the junior employee’s assignment. Since the junior employee has the requisite seniority in the required job class (Assistant Foreman-Flagman), he was properly assigned this overtime work following the criteria in MOA Section 8 and Rule 17.

Award:

Claim denied.

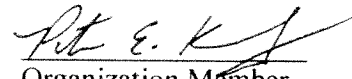


Patrick J. Halter
Neutral Member

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Carrier Member
Robert A. Paszta



Organization Member
Peter E. Kennedy

Dated this 27th day of June, 20 12