

AWARD NO. 83  
Case No. 83

Organization File No. A02851109  
Carrier File No. 2009-044155

**PUBLIC LAW BOARD NO. 7163**

PARTIES     ) BROtherHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,  
              ) INTERNATIONAL BROtherHOOD OF TEAMSTERS  
TO            )  
              )  
DISPUTE     ) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier failed to call and assign Assistant Foreman M. Peterson to temporarily fill the assistant foreman-flagman position in connection with incumbent J. Mallette's rest day unavailability on January 10 and 11, 2009 and instead called and assigned Foreman K. Cain.
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Peterson shall now be compensated for thirty (30) hours at the applicable time and one-half rate of pay.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

In January 2009 J. Mallette was regularly assigned as an assistant foreman-flagman on the Baltimore Division working in the vicinity of Mile Post CFP 111.6. January 10 and 11, a Saturday and Sunday, were Mallette's regularly assigned rest days. The Carrier had determined that work on his assignment was necessary for those two days, but Mallette was not available. Consequently, the

Carrier called K. Cain, who was regularly assigned as a production track foreman at the time, to perform this work. A claim was filed on behalf of Claimant, who is junior to Cain and was regularly assigned as an assistant foreman on Mobile Gang 6D72 at the time. It is the Organization's position that this was a temporary vacancy and should have been filled by an employee in the same grade, as was Claimant, or by an employee in a lower graded position. The Organization argues it was improper to fill the vacancy with a higher rated employee.

The Organization relies primarily upon Rule 3, Section 4(a), which states, in pertinent part, as follows:

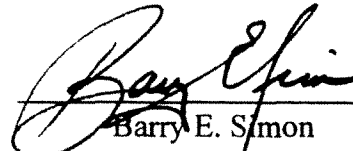
Section 4. Filling temporary vacancies


(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.


We find that the Organization's reliance on this provision is misplaced. In Award No. 39031, the Third Division, with Referee Wallin, held that "... Rule 3, Section 4(a) appears to apply only where it is known that there is a new position or vacancy that requires advertisement and award. It allows the vacancy to be filled temporarily while that process is conducted." This Board reached the same conclusion in Award No. 51.

In the instant case, there was no vacancy that required advertising and award. The work performed was part of J. Mallette's regular position. He was unavailable to perform his regular assignment on the two days in question. He did not vacate the position, as the Organization has argued. Accordingly, we find no support for the Organization's argument that Claimant held a preferred right to this work over Cain. The Agreement, therefore, was not violated.

AWARD: Claim denied.

  
Barry E. Simon  
Chairman and Neutral Member

  
Timothy W. Kreke  
Employee Member June 27, 2011

  
Noel V. Nihoul 7/22/11  
Carrier Member

Dated: May 31, 2011  
Arlington Heights, Illinois