

**PUBLIC LAW BOARD NO. 7035
CASE NO. 6**

PARTIES TO THE DISPUTE: (Brotherhood of Maintenance of Way Employees
(Division – IBT Rail Conference
(
(and
(
(National Railroad Passenger Corporation
(Amtrak

STATEMENT OF CLAIM:

(1) The Agreement was violated when the Carrier failed and refused to allow Mr. R. Foronda, following his return to work on April 24, 2006, to place himself on the B&B foreman position that was awarded to junior employee M. Mancini on April 24, 2006 (Carrier's File BMW-530 NRP).

(2) As a consequence of the violation referred to in Part (1) above, Claimant R. Foronda shall now '... be allowed to own the position of B&B Foreman, be paid the difference in the rates of pay and be placed on the roster ahead of Mr. Mancini as a remedy to the Carrier's violations.' ”

FINDINGS:

The Board, upon consideration of the entire record and all 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; this Board has jurisdiction over the dispute involved herein; and that the parties were given due notice of the Hearing held.

Applicants for a temporary vacancy for a B&B Mechanic Foreman in Gang M-301 headquartered in Rennselear, New York were required to demonstrate qualifications for the position through the Carrier's written examination and structured interview process. On February 28, 2006, Claimant and "C" Operator

Michael Mancini were administered a written examination by the Carrier's H. R. Dept.

The record indicates that Claimant received a 30-day Suspension (15 days held in abeyance) and CSX barred Claimant from its Territory until cleared by K. M. O'Toole of CSX. Said penalty was the result of a March 9, 2006 incident in which Claimant negligently disabled an automatic grade crossing warning device without permission from the Train Dispatcher and subsequently returned the track back to service without notifying the Dispatcher. Claimant served his Suspension from April 4 through April 18, 2006.

On April 12, 2006, during Claimant's absence, the Carrier advertised a B&B Mechanic Foreman in Gang M-301, headquartered in Rennsalear, New York. Said position required CSX qualifications. Applications were accepted until April 28, 2006. Both Mancini and Claimant submitted bids for the position. Mancini was interviewed on April 12. Claimant was not interviewed because he was in the process of serving his 15-day Suspension and was barred from operating over CSX territory, thus disqualifying Claimant from the position. The position was awarded to Mancini on April 24, 2006. On April 28, 2006, the Carrier requested that CSX consider lifting the ban against Claimant. On May 4, 2006, CSX did agree to lift the ban, thus permitting Claimant to work on CSX territory. However, such action was beyond the 7-day period in which Claimant was eligible to exercise his seniority.

By letter dated May 18, 2006, the Organization submitted a Claim on behalf of Claimant for establishment of a seniority date on the B&B Foreman roster and payment of lost earnings because he was not selected for the B&B Foreman position. The Division Engineer denied the Claim in a letter dated July 12, 2006. The Claim was appealed in the usual and customary manner.

According to the Organization, the Carrier violated Rules 5, 7, 8 and 15 of the Agreement when it denied Claimant the B&B Foreman position. According to the Organization, because Claimant was senior to Mancini, and because Claimant had passed the qualifying exam, he should have been promoted to the position of B&B Foreman. As a remedy, the Organization claims that Claimant should be placed into the position of B&B Foreman, compensated for lost pay and be placed on the B&B Foreman roster ahead of Mancini.

Conversely, the Carrier argues that the Organization cannot meet its burden of proof that Claimant is entitled to the position of B&B Foreman. According to the Carrier, Claimant did not have all of the requisite qualifications which included the approval of CSX. At the time of the bid, Claimant did not have approval from CSX based on his earlier disciplinary Suspension. The Carrier was justified in denying Claimant the position.

After a review of all the relevant evidence, this Board finds that the Organization has been unable to meet its burden of proof. One of the qualifications of the B&B Foreman position is the ability to work on CSX Territory. It is clear that Claimant, based on his earlier Suspension, was temporarily barred from CSX Territory. The question of the ability to work on CSX Territory falls within the purview of CSX and during the relevant time period, CSX had not yet allowed Claimant to work on CSX Territory. The Carrier did not act unreasonably. The Claim is denied.

The Claim is denied.

AWARD

Claim denied.

Steven
Bierig

Digitally signed by Steven Bierig
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Steven M. Bierig
Chairperson and Neutral Member



Bradley A. Winter
Organization Member



Rachelle A. Miele
Carrier Member

Dated at Chicago, Illinois this 1st Day of March, 2010.