

Public Law Board 7163

Award No. 50

Parties to the Dispute:

Brotherhood of Maintenance of Way Employees Division

IBT Rail Conference

and

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 Mr. J. Page to fill a foreman/flagging vacancy beginning May 27 and continuing through June 8, 2007 and instead assigned Track Inspector D. Calhoun, Foreman J. Carr and Track Inspector G. Reaves, Jr. to fill such vacancy [System File B14218007/12(07-0943) CSX].

"(2) As a consequence of the violation referred to in Part (1) above, Claimant J. Page shall now be compensated for the difference in pay between an 'A' Machine Operator rate and the foreman rate for all straight time hours and at the applicable time and one-half rate of pay for all overtime hours worked by Track Inspectors D. Calhoun and G. Reaves, Jr. and Foreman J. Carr in filling the aforesaid vacancy beginning May 27 and continuing through June 8, 2007."]

Findings:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934. Public Law Board 7163 has jurisdiction over the parties and the dispute involved herein.

The Organization presented a claim alleging that Claimant should have been assigned to a temporary foreman position while the incumbent employee was on vacation. According to the Organization, the Carrier was free to leave the assignment blanked during the incumbent employee's vacation. However, when the Carrier chose to fill the job, they were required to abide by the seniority provisions of the Agreement. According to those Agreement provisions, Claimant should have been offered the assignment. Further, the Carrier's defense, that the Claim was materially altered and should be dismissed, is not compelling because the only thing altered was the amount of compensation sought. Claimant was the senior employee, qualified, available and had requested the work.

The Carrier asserts a procedural violation by the Organization that requires the instant Claim to be dismissed. According to the Carrier, the Organization amended the Claim during the handling of the Claim. The alteration was a material change to the Claim and it should accordingly be dismissed. On the merits, the Carrier asserts that there was no violation of the Agreement because Rule 3, Section 4 clearly states: "(a) A position or vacancy may be filled temporarily pending assignment." The position was filled by employees who were working on the seniority district, pursuant to Rule 19. Because Claimant was working in a service lane work team, he could not be considered for a stationary district vacancy.

Rule 3, Section 1, entitled "assignment to position," provides in pertinent part:

In the assignment of employees to position under this Agreement seniority shall govern.

Section 4, entitled "filing temporary vacancies," provides in pertinent part:

(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 assignment pending advertisement and award.

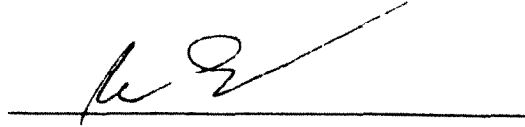
This Board has reviewed the Claim as originally presented and as docketed before this Board. Initially, the Organization sought 56 hours at straight time and 105.5 at the OT rate. When docketed, the Claim sought the difference in the A Machine Operator rate and the Foreman. The Organization cites to Third Division Award 37053 as illustrative of the principal that a modification of a claim's requested monetary remedy does not effect a material change in the claim warranting dismissal. This Board agrees. The dates, location, parties and allegation did not change. The only difference is the amount of money sought. That change does not alter the evidence, arguments or defenses, only the amount of the remedy – if any.

After a review of the record, this Board finds that there was a temporary vacancy on Gang 5JA4 when T. Sumner, the incumbent foreman, was on vacation from May 27 through June 8, 2007. This vacation created a temporary vacancy. The Carrier filled that vacancy with two employees who were junior to Claimant on various dates in the vacation period.

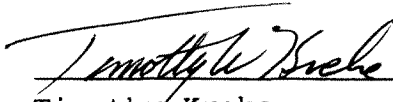
Claimant's seniority district was within the area covered by the Service Lane Work Team. The Carrier points to no Rule or Award for the proposition that employees working on a Service Lane Work Team are prohibited from filling positions or vacancies in their home seniority district. Claimant had seniority over the two employees who were offered the work. Claimant should have been offered the work. He worked his position as an A Machine Operator during the period at issue. His remedy is the difference in the A Machine Operator straight and OT rates and the Foreman straight and OT rates during the period at issue. Claim sustained.

Award:

Claim is sustained.



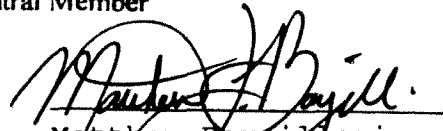
Brian Clauss
Chairman and Neutral Member



Timothy Kreke

BMWED

Organization Member



Matthew Borzilleri

CSX Transportation, Inc.

Carrier Member

Dated this 17th day of February 2011