

AWARD NO. 54  
Case No. 54

Organization File No. B17402307  
Carrier File No. 12(07-1007)/2007-001641

**PUBLIC LAW BOARD NO. 7163**

PARTIES     ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION,  
              )    INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
TO            )  
              )  
DISPUTE     ) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1.     The Agreement was violated when the Carrier assigned Jacksonville Service Lane employee R. Roberts to operate a machine on the Florence Service Lane beginning on March 10, 2007 and continuing through April 13, 2007.
2.     As a consequence of the violation referred to in Part (1) above, Claimant W. Oliver shall now "... be compensated for the forty straight time hours worked each week (200 hours X 20.47 = 4,094.00), plus all the overtime (270 hours X 30.70 = 8,289.00) and double time (18 hours X = 736.92) that was improperly made by the carrier's assigning this employee across his seniority lines."

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.

Between March 10, 2007 and April 13, 2007, the Carrier filled a Machine Operator position on the Florence Service Lane Work Territory while the vacancy was pending bulletin. The employee filling this position was R. Roberts, who, according to the Organization, holds seniority as a Class

“A” Machine Operator on the Jacksonville Service Lane Work Territory and was regularly assigned to a Machine Operator position on that territory at the time. Claimant, who holds seniority as a Class “A” Machine Operator on the Florence Service Lane Work Territory filed the instant claim asserting that he should have been assigned to this vacancy. At the time, he was regularly assigned as a Class “A” Machine Operator on Gang 6F62.

The Organization relies upon the following provisions of Rule 3 - Selection of Positions:

Section 1. Assignment to position

In the assignment of employees to positions under this Agreement, seniority shall govern. The word “seniority” as used in this Rule means, first, seniority in the class in which the assignment is to be made, and thereafter, in the lower classes, respectively, in the same group in the order in which they appear on the seniority district roster. . . .

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. When furloughed employees are to be used to fill positions under this Section, the senior qualified furloughed employees in the seniority district shall be offered the opportunity to return to service. Such employees who return and are not awarded a position or assigned to another vacancy shall return to furlough status.

\* \* \*

(f) Vacancies which are not advertised may be filled in like manner.

According to the Organization, the seniority rights of Roberts were confined to the Jacksonville Service Lane, just as Claimant’s were confined to the Florence Service Lane. Thus, the Organization asserts Roberts’ job opportunities did not include work in the Florence Service Lane. Conversely, it says the assignment should have gone to an employee in the Florence Service Lane. The Carrier, on the other hand, maintains that Roberts does have seniority on the Florence Service Lane Working Territory. Neither the Carrier nor the Organization has provided the Board with any

documentation that would resolve this conflict. We can, however, address the dispute without determining where Roberts held seniority. Even if the Carrier is correct with regard to where Roberts held seniority, it does not seem to dispute that he was junior to Claimant as a Machine Operator.

The Carrier has responded that Claimant had not requested to work this vacancy. The Organization does not deny that Claimant had not requested the work, but argues he did not have to make a request. Rather, it says, the Carrier had an obligation under the Agreement to offer the work to him. The crux of the dispute, therefore, is whether the Carrier must offer work to employees in seniority order, or whether the Carrier may use the senior employee who requests the work.


Although the Organization cites Rule 17 - Preference for Overtime Work, which requires the Carrier to offer work to employees in seniority order, we do not find this provision to be applicable. While there was an overtime component to the assignment, it would properly be worked by the employee holding the assignment. The question of who that employee is must be resolved by Section 4 of Rule 3, which governs filling temporary vacancies.

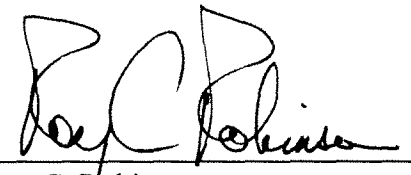
The provision is not specific as to whether the work must be offered to the senior employee or given to the senior employee who requests it. We note, however, that the parties specifically provided for offering the work in Rule 17, but did not in Section 4 of Rule 3. Rather, the provision merely states that "the senior qualified available employees will be given preference." In the case of furloughed employees, the provision goes on to require the Carrier to offer the senior employees the opportunity to return to work. We find the absence of the requirement to offer the work to active employees to be significant. To place that requirement into the rule, where the parties could have

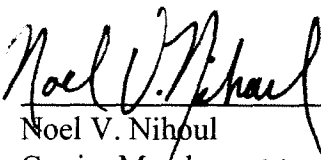
done so if that was their intent, would effectively amend the Agreement. This Board does not have the power to do so.

We must find, therefore, that the Carrier had no obligation to assign the work to employees who had not requested it. There is no assertion that Claimant requested the work, and we find, therefore, that he was not entitled to the earnings of the assignment. The Agreement was not violated.

AWARD: Claim denied.

  
Barry E. Simon  
Chairman and Neutral Member

  
Roy C. Robinson  
Employee Member

  
Noel V. Nihoul  
Carrier Member 1/26/2010

Dated: January 22, 2010  
Arlington Heights, Illinois