

PUBLIC LAW BOARD NO. 7163

AWARD NO. 69

CASE NO. 69

**PARTIES TO
THE DISPUTE:**

**Brotherhood of Maintenance of Way Employees
Division - IBT Rail Conference**

vs.

CSX Transportation, Inc.

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it failed to assign B&B employee Mr. J. Angell to perform flagging work in connection with B&B Department related work that was being performed by a contractor at Salt River Bridge at Mile Post LH21.9, Westpoint, KY on the Louisville seniority district of the Midwest Region, on July 21, 22, 23, 24, 25, 28, 29, 30 and August 1, 2008 and instead assigned junior employee D. Seelye (System File I62726008/2008-031933).
2. As a consequence of the violation in Part 1 above, Claimant J. Angell shall be compensated for eighty (80) hours at his respective straight time rate of pay and thirty (30) hours at his respective time and one-half rate of pay."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.


The instant dispute alleges an out-of-seniority work assignment that occurred during the summer of 2008. After reviewing the record, however, we are compelled to find that it does not satisfy the burden of proof to establish a violation of the Agreement. The record does not establish that claimant was working in the proper department at the time to establish his eligibility for the work assignment.

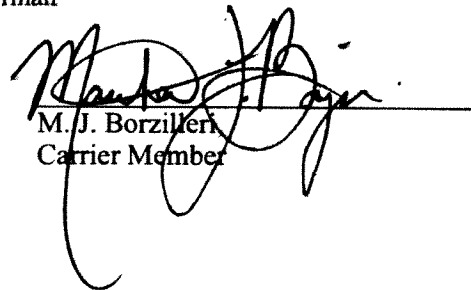
Given the state of the record, we must find it to be insufficient to warrant a finding in the favor of the claimant.

AWARD:

The Claim is denied.


Gerald E. Wallin, Esq., Chairman


Kevin Evanski,
Organization Member


M.J. Borzilleri,
Carrier Member

Date: 2/10/11