

PUBLIC LAW BOARD NO. 7163

AWARD NO. 71

CASE NO. 71

**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 properly award and assign Mr. S. L. Page to the machine operator (backhoe) position vacancy on Gang 5GG1, with a stationary position located at Scottsville, Virginia within the Richmond Seniority District of the Florence Division, on May 29, 2008 (System File G33828408/2008-025822)
2. As a consequence of the violation referred to in Part 1 above, Claimant S. L. Page shall have an established seniority date as machine operator; be given equal and fair instruction and training up to a period of thirty (30) days to become qualified for said position; and, be compensated at the higher hourly rate of pay difference he would have received had the Carrier properly awarded and assigned him to the machine operator (backhoe) position vacancy, beginning on May 29, 2008 and continuing until the violation ceases to exist."

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 claim arose after claimant was not awarded the machine operator position in question. It is undisputed that claimant had only some seven months of service as a Trackman with the Carrier at the time the position was advertised. No other bidder with less than one year of service was awarded the position instead of claimant. Indeed, the advertisement had no qualified bidders.

The pivotal issue in this dispute is the question of whether applicable FRA Regulations prevented the Carrier from awarding the position to claimant. The Carrier maintains that the applicable regulations required the successful bidder to have at least one year of experience supervising track restoration work or the same year of experience in track inspection. The Organization's view is that only six months of experience was required by practice. Because claimant had at least seven months of experience, he should have been awarded the position.

It is unrefuted in the record that the machine operator position in question would have to work by himself at times. This means he would have to effectively self-supervise any track restoration or renewal work he performed or be able to self-inspect his work for proper performance.

The text of the applicable FRA Regulation is clear and unequivocal. 49 CFR § 213.7 explicitly states that such supervision or inspection duties require the Carrier to insure that such a person meet the stated experience requirements. The instant record does not establish that claimant met those requirements.

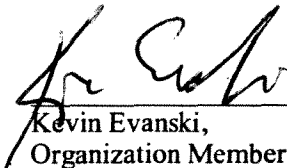
Although the Organization proffered an example of another employee who obtained Track Foreman seniority after only some two months of total service, the record does not establish what the duties were that led to such seniority. If, for example, it was gained merely by performing flagging duties for other workers, the assignment likely did not fall under the requirements of the FRA Rule.

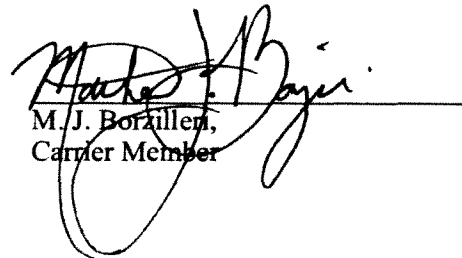
Given the state of the record before us, we do not find that the Carrier violated the Agreement as alleged.

AWARD:

The Claim is denied.


Gerald E. Wallin, Esq., Chairman


Kevin Evanski,
Organization Member


M.J. Borzilleri,
Carrier Member

Date: 2/10/11