

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7163**

Brotherhood of Maintenance of Way)	
Employees Division, IBT)	
)	
vs.)	Case No. 140
)	
CSX Transportation, Inc.)	

Statement of Claim

"Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned employee G. Church to perform off-district assistant foreman flagman duties on the S&NA North Seniority District on October 10 through November 11, 2011 without first calling and assigning such work to Claimant J. Calvert (System File I60709011/2011-111608).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Calvert shall now be compensated for the one hundred ninety-two (192) straight time hours and one hundred seventy-three and one-half (173.5) overtime hours that Mr. Church worked on the S&NA North Seniority District."

Background

Claimant maintains seniority in certain classifications within the Track Department. In 2011 his regular assignment was the headquartered position machine operator on the S&NA North Seniority District, Nashville Division. Employee G. Church, a W&A Seniority District employee, was assigned to SLWT gang 5N45 as assistant track foreman with flag duties on the S&NA North Seniority District beginning September 22, 2011.

On November 28, 2011 the Organization filed a claim alleging that Church performed flag duties on the S&NA North Seniority District in violation of Rule 1 – Seniority Classes, Rule 3 – Selection of Positions, Rule 4 - Seniority, Rule 17 – Preference for Overtime Work and Memorandum of Agreement dated May 23, 2007.

On January 25, 2012 the Carrier denied the claim stating that Church's flag duties were for gang 5N45 and its service lane work and he was not working as a W&A Seniority District employee. "The SLWT gang was on the proper territory ... [t]he seniority in question was SLWT Nashville and not S&NA North seniority district. [Claimant] was assigned a position on a stationary gang (6MG1) as a Machine Operator A and was performing his duties as assigned during this curfew."

On February 9, 2012 the Organization appealed the claim denial with the argument that Church did not hold an SLWT position from October 10, 2011 through November 11, 2011. Instead, he held position on the W&A Seniority District and performed flag duties off his seniority district.

The parties convened in conference on June 5 – 6, 2012 wherein the Organization submitted Claimant's typed statement that Church "had already been displaced by P.W. Mitchell before he came to the S&NA North to flag. Mr. W.O. Price sent G.E. Church to flag even though he did not have an SLWT flagging job bid anymore." The conference concluded without a satisfactory resolution.

On July 10, 2012 the Carrier denied the appeal. Church was an SLWT employee performing flag duties. The Carrier states that, contrary to the Organization's assertion, Church's Work History Screen shows that he was not displaced from his SLWT's flag position during the period of September 22, 2011 through November 13, 2011.

On September 7, 2012 the Organization responded to the appeal declination with a written statement from Employee P. Mitchell stating that he displaced Church from the SLWT position on October 10, 2011.

Findings

Public Law Board 7163, upon the whole record and all the evidence, finds that (1) the parties to this dispute are Carrier and Employees within the meaning of the Railway Labor Act as amended, (2) the Board has jurisdiction over this dispute and (3) the parties to this disputes were accorded due notice of the hearing and participated in this proceeding.

There is no dispute that (1) Church was an assistant track foreman with flag duties for the SLWT on the S&NA North Seniority District, Nashville Division, beginning September 22, 2011; (2) Church was on the S&NA North Seniority District solely due to his gang position on the SLWT; (3) Claimant's seniority is on the S&NA North Seniority District; and (4) Church's seniority is on the W&A Seniority District.

According to the Carrier, Church performed flag duties for the SLWT gang from September 22, 2011 through November 11, 2011. The Organization maintains that Church was displaced by Employee Mitchell from the SLWT gang on October 10, 2011 and, thereafter, Church worked out of his seniority district. The disputed period of time is October 10, 2011 through November 11, 2011.

The Carrier acknowledges that when there is no SLWT member to perform flag duties the work would be assigned to an employee on the S&NA North Seniority District. In this situation the Organization states that flag duties would be assigned to Claimant given his seniority, availability and qualifications.

The Work History Screen shows Church as the assistant track foreman from September 22, 2011 through November 13, 2011. The Organization's response to the Work History Screen is Employee Mitchell's handwritten statement:

I P.W. Mitchell ... displaced [Church] on 10/10/2011 on payroll #5N53. This job started working on Dwight Emerson at that time. Mr. Church was sent over to the SNAN to work a flagging job extra at the same time. Mr. Church marked his time on my payroll #5N53 week ending 10/14/2011. Mr. Church worked on the SNAN from 10/10/2011 thru 11/11/2011. I do not know what other payrolls he marked his time on for weeks ending 10/14, 10/28, 11/4 and 11/11/2011. Mr. Church did NOT have a bid in job on the SNAN at this time.

[Emphasis supplied.]

Based on Employee Mitchell's statement, he displaced Church from the SLWT gang on October 10, 2011 and, once displaced, Church "did not have an SLWT flagging job bid in anymore." The Board finds that Church continued to perform flag duties on the S&NA North Seniority District after October 10, 2011; however, he was not performing flag duties in a job bid directly linked to the SLWT. Rather, Church was working as an extra off his seniority district (W&A) without the out-of-district justification accorded to an SLWT gang position.

The Board assesses the Work Screen History in the context of the Claimant's typed statement (presented during conference) and corroborated by Employee Mitchell's handwritten statement (presented post-appeal declination). Approximately thirty (30) days lapsed between the date of conference (June 5 - 6, 2012) and the date of the appeal declination (July 10, 2012) for the Carrier to ascertain the validity of Claimant's statement that Employee Mitchell displaced Church and "W.O. Price sent G.E. Church to flag even though he did not have an SLWT job bid anymore." The Work Screen History, or other relevant document, for Employee Mitchell is not in the record to verify or rebut Claimant's statement. Employee Mitchell's handwritten is not shown to be disingenuous. Standing alone the Work Screen History is an incomplete rebuttal to Claimant's and Mitchell's statements.

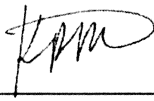
The Board finds that as of October 10, 2011 Employee Church did not possess the requisite seniority to perform flag duties on the S&NA North Seniority District as he was no longer tethered to the SLWT gang. In view of this finding, the Board sustains the claim in Part 1. As for the remedy, the Board finds that the loss endured by an employee caused by a violation of the collective bargaining agreement is the amount the employee would have earned absent any violation of the contract. The Claimant should be made whole for all work he would have performed had the Carrier complied with the Agreement and properly assigned Claimant to the disputed work. Thus, the remedy in Part 2 of the claim is granted.

Award


The claim is sustained. Claimant will be compensated for the differential in earnings between what he earned during the period of October 10, 2011 through November 11, 2011 and what he would have earned performing flag duties on the S&NA North Seniority District beginning October 10, 2011 up to and including November 11, 2011.

Patrick J. Halter /s/

Patrick J. Halter
Neutral Member
Award No. 140



Rob Miller
Carrier Member



Andrew M. Mulford
Organization Member

Dated on this 20th day
of August, 2014