

AWARD NO. 152

Case No. 152

Organization File No. G33801312

Carrier File No. 2012-114754

**PUBLIC LAW BOARD NO. 7163**

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

**STATEMENT OF CLAIM:**

1. The Agreement was violated when, on November 7, 8, 9 and 10, the Carrier assigned Junior Employee V. Leighty to flag for outside contractor "SKANKSA" in the vicinity of Mile Post CAB 7.4 on the Richmond Seniority District located near Richmond, Virginia and failed to properly assign such work to Claimant S. Reynolds.
2. As a consequence of the violation referred to in Part 1 above, Claimant S. Reynolds shall now receive the higher straight time rate of pay that was paid to junior employee V. Leighty, ID#215613 instead of what Claimant Reynolds actually received during the period claimed, and the same (33½) hours time and one half and the same (17½) hours double time that was received by junior employee Leighty during the period claimed when he was used to perform the Maintenance of Way work of flagging that was temporarily vacated by employee BR McGuire, ID#627364, at the appropriate Assistant Track Foreman-Flagman time and one-half and double time rates of pay in effect during the period claimed.

**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.

On the dates of claim, November 7 through 10, 2011, and prior thereto, Claimant was regularly assigned as a vehicle operator on a non-mobile gang headquartered at Newport News, Virginia. This location is within the Richmond Seniority District. Claimant holds seniority in that district in a variety of classifications, including assistant foreman.

During this same period of time, employee B. McGuire was regularly assigned to the night Assistant Foreman Flagging position to work with contractor Skanksa in and around Mile Post CAB 7.4 on the Richmond Seniority District. McGuire began his scheduled vacation on November 7, requiring the Carrier to temporarily fill his position.

According to the Organization, the Carrier force assigned Trackman V. Leighty to fill the vacancy on November 7, 8, 9 and 10, 2011. Leighty, who also holds seniority as an assistant foreman, is junior in seniority to Claimant. During this period of time, according to the Organization, Leighty was compensated at the overtime or double time rate because he objected to being force assigned to the assistant foreman position. In addition, says the Organization, Leighty received compensation at the assistant foreman rate for his regular trackman position.

The Organization argues that Claimant should have been assigned to the vacancy as he was senior to Leighty. It asks, therefore, that he be compensated for the earnings he would have received. It notes that the Carrier eventually realized its error and assigned Claimant to the flagging position on November 19, 2011 and continued to work him in that capacity until McGuire's return from vacation.

The Carrier has denied the claim based upon its assertion that it had offered the temporary assignment to all employees during the week prior to the vacancy. It says Claimant did not request

to work the vacancy. Therefore, the Carrier submits it was justified in assigning the work to a junior employee. Notwithstanding this, the Carrier argues the Agreement requires only that senior employees "will be given preference" for temporary vacancies. It denies that it is required to offer the work and cites Award No. 54 of this Board in support of its position.

The Organization refers to a statement by Claimant that acknowledges the Roadmaster had asked employees at Scottsville and Richmond if they wanted to work the vacancy. Because he was working at Newport News, Claimant explained that he was not asked about the vacancy until he received a call on November 17, 2011 regarding the balance of McGuire's vacation.

As this was a temporary vacancy, the procedures set forth in Rule 3, Section 4 of the Agreement govern how the vacancy is to be filled. It specifies that "the senior qualified available employees will be given preference." This is the same provision that was interpreted by this Board in Award No. 54, where we wrote:

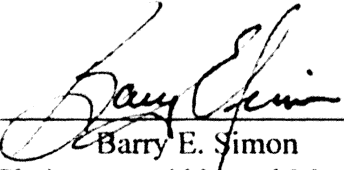
The provision is not specific as to whether the work must be offered to the senior employee or given to the senior employee who requests it. We note, however, that the parties specifically provided for offering the work in Rule 17, but did not in Section 4 of Rule 3. Rather, the provision merely states 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.

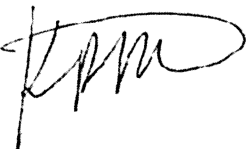
On the basis of our ruling in Award No. 54, we must conclude that Claimant would have had a superior right to the work over Leighty only if he had requested to work the temporary vacancy.

He made no request and the Carrier, under the Rule, was not obligated to offer it to him. The Agreement was not violated.

AWARD: Claim denied.

  
Barry E. Simon  
Chairman and Neutral Member

  
Andrew Mulford  
Employee Member

  
Rob Miller  
Carrier Member

Dated: September 4, 2014  
Arlington Heights, Illinois