AWARD NO. 159
Case No. 159

Organization File No. B17150112
Carrier File No. 2012-125875

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 the Carrier assigned junior employe J. Bridgeman to perform overtime flagging work beginning on May 11, 14 and 15, 2012 without calling and offering the work to senior Claimants L. Harris, S. Newton, C. Warner and B. Hurst.

2. As a consequence of the violation referred to in Part 1 above, Claimants L. Harris, S. Newton, C. Warner and B. Hurst shall now be provided twenty four (24) hours straight time and one and half (1.5) hours overtime.

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, the Carrier had a temporary vacancy for flagging service between Mile Posts SF 262.0 and SF 262.5 on the Raleigh/Rocky Mount Seniority District. According to the Organization, the Carrier used a furloughed track inspector, J. T. Bridgeman, to perform this work. The Organization has filed this claim on behalf of four Machine Operators who were regularly

assigned to various positions on Gang 5F20, headquartered at Hamlet, North Carolina, which is located on the Raleigh/Rocky Mount Seniority District. It asserts they notified their supervisor of their desire to fill this vacancy once they learned of its existence. The Organization argues, though, that it was unnecessary for them to request the position as the Carrier should have called one of them for this work because they are all senior to Bridgeman. It insists they were available and qualified to perform the work.

The Carrier argues that while Claimants might have a preference over junior employees for filling temporary vacancies, having a preference does mean the Carrier is obligated to offer them the work. In support of this position, the Carrier cites this Neutral's decision in Award No. 54 of this Board, wherein he wrote:

> 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.
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> 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.
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> 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 sates 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.

The Carrier has denied that Claimants made a request to work the flagging vacancy. The Organization, as noted, simply says they asked to work the job "once Claimants learned of the assignment." This is not an indication they asked to be put on the job before Bridgeman was working on it. It is more likely they saw, or learned, that Bridgeman was already working and they made a request, if such a request was made. In any case, there is no evidence to support the Organization's assertion they made a proper request to work the job.

Consequently, we must find that the Carrier's use of Bridgeman to perform this work was not a violation of the Agreement. The claim, therefore, is without merit and must be denied.

AWARD: Claim denied.

Barry E. Simon
Chairman and Neutral Member

Andrew Mulford
Employee Member

Rob Miller
Carrier Member

Dated: April 2, 2015
Arlington Heights, Illinois