

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

**Brotherhood of Maintenance of Way** )  
**Employees Division, IBT Rail Conference** )  
 )  
**and** )  
 )  
**CSX Transportation, Inc.** )

**Case No. 168**  
**Award No. 168**

**Statement of Claim**

"Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier failed to properly bulletin a vehicle operator position on Force 6K17 beginning August 21, 2012 and continuing and, furthermore, inappropriately assigned Machine Operator Smith to work the position (System File MASSARIC.112/2012-133082 CSX).
2. As a consequence of the violation referred in in Part 1 above, Claimant P. Massari shall now be compensated for lost wages, benefits and credits beginning August 21, 2012 and continuing until the violation ceases."

**Background**

Claimant maintains twenty-two (22) years of seniority as a vehicle operator and regularly performed such duties on the Great Lakes Service Lane (GLSL) in 2012. Machine Operator Smith's ten (10) years of seniority on the GLSL as a vehicle operator is junior to Claimant.

The Organization states the Carrier violated the Agreement when it failed to properly bulletin the vehicle operator position on Force 6K17. In this regard, the Carrier posted or bulletined a Class "A" machine operator position and awarded it to Mr. Smith on or about August 21, 2012. Thereafter, Machine Operator Smith did not operate Class "A" machines as the Carrier assigned him to operate the boom truck (vehicle operator duties) in excess of twenty (20) days, a violation of Rule 3. Mr. Smith, moreover, worked overtime performing vehicle operator duties which, under Rule 17, should have been assigned to Claimant. The Carrier's violation of the rules deprived Claimant of overtime opportunities. Although the Carrier argues that Claimant was fully employed and, therefore, suffered no losses, preserving the integrity of the Agreement justifies the requested remedy.

According to the Carrier, the Organization failed to meet its burden of proof. The duties of a vehicle operator are not reserved exclusively to the vehicle operator classification. The Carrier was not required to assign a vehicle operator to perform this work. Claimant worked more overtime hours than the junior employee during the relevant period of time under this claim (August 15, 2012 to October 15, 2012). Any monetary relief for Claimant is an unwarranted windfall.

### 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.

Having reviewed the evidentiary record established by the parties in this proceeding, including the arbitral precedent relied upon by each party, the Board finds that the claim was timely and properly presented and handled by the Organization at all stages of appeal up to and including the Carrier's highest appellate officer.

The Board finds, further, that the Carrier did not properly bulletin for a vehicle operator position on Force 6K17. Instead, the Carrier bulletined a Class "A" machine operator position. Based on the Carrier's representations to the BMW force that the bulletined position to be filled was machine operator, Mr. Smith applied for and was awarded it on August 15, 2012. Once in the machine operator position, Mr. Smith did not perform those duties as the Carrier assigned him to operate the boom truck (vehicle operator duties). Mr. Smith worked out of class, contrary to the bulletined position and, in doing so, the Carrier assigned an employee junior to Claimant's seniority in the vehicle operator class. Mr. Smith did not perform vehicle operator duties incidental to the bulletined position; vehicle operator duties were the purpose and function for issuing the bulletin.

The Carrier's decision to issue a bulletin for one position (machine operator) but assign duties of another position (vehicle operator) is "bait and switch" advertising. Rule 3(h) states that an employee "shall be assigned duties associated with the job class he was assigned by bulletin award." The Carrier violated Rule 3 and, in doing so, worked an employee junior to Claimant. Additionally, the Carrier violated Rule 17 as Claimant was denied preference for overtime work performed by the junior employee.

The Carrier's response that it did not violate the rules is not persuasive. The Carrier observes that from August 15, 2012 (Mr. Smith awarded advertised position) to October 15, 2012 (bulletined machine operator position abolished), Claimant earned more overtime compensation than Mr. Smith and they both worked the same number of regular hours. In the

Carrier's view there was no loss of work opportunity for Claimant. The Carrier's decision to assign the junior employee duties without regard to the bulletined position awarded denies Claimant the use of and benefit from his earned seniority as a vehicle operator and undermines the value of seniority earned by an employee within class. Preserving the parties' agreed-upon exchange as embodied in the rules enhances the integrity of the Agreement. The Organization has met its burden of proof and demonstrated that the Carrier did not comply with the Agreement.

As a remedy, Award 50 of this Board addresses this situation. That is, Claimant should have been offered the work during the period at issue (August 2012 - October 2012). Claimant's remedy is the difference in the straight and overtime rates for the class of duties he performed and the straight and overtime rates for the duties performed by the junior employee. In short, Claimant receives the difference in pay between the position he worked and the position claimed.

Award

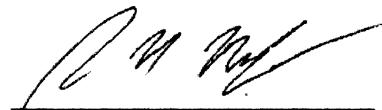
Claim sustained in accordance with the findings.



Patrick Halter  
Neutral Member



Rob Miller  
Carrier Member



Andrew M. Mulford  
Organization Member

Signed on this 26th day  
of January, 2016