

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD 7163**

**Brotherhood of Maintenance of Way
Employees Division, IBT Rail Conference**

and

CSX Transportation, Inc.

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Case No. 170

Award No. 170

Statement of Claim

"Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when it assigned junior and/or out of class R. Correll to provide track protection for outside contractors on the Appalachian Division on March 7, 8 and 9, 2011 and failed to assign such to Claimant D. Tapp (Carrier's File 2011-095127 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant D. Tapp shall now '... be paid 24 hours straight time and 12 hours overtime at the applicable rate of pay.' (Employees' Exhibit 'A-1')."

Background

During 2011 Claimant's regular assignment was an assistant foreman for Gang 5C27 on the Appalachian Division (AD). His duties included track protection/flagging work. On March 7, 8 and 9, 2011 the Carrier determined that track protection/flagging was required for contractors working on the AD. The Carrier assigned the duties of track protection/flagging to Mr. Correll, a junior employee to Claimant.

The Organization asserts that the Carrier failed to offer or assign Claimant the temporary position of assistant foreman flag work. This violates Rule 3, Section 4 requiring the Carrier to extend preference for filling a temporary vacancy to the senior qualified employee working in a lower rated position or in the same grade and class. Mr. Correll's assigned position was lubricator/blue hat. Claimant is the senior qualified employee available for the temporary assistant foreman position but was not offered the work opportunity.

According to the Carrier, the work opportunity to serve as temporary assistant foreman/flagging work was announced at a morning job briefing days prior to the start of the claimed work. Claimant did not respond to or express an interest in the work; Mr. Correll did respond and express an interest. The Carrier states that Award 54 of this Board is precedent for the Carrier's position that it has no obligation to assign a senior employee to a temporary position unless the employee responds to and expresses an interest in performing the work to the supervisor.

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 dispute were afforded 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 violate the rules as alleged by the Organization. Undisputed is that Claimant was aware of the work opportunity announced at the morning job briefing; however, Claimant did not respond to it. Award 54 of this Board aligns with the Carrier's position and Award 152, also of this Board, affirms Award 54. That is, Claimant is the senior qualified employee for the temporary assistant foreman/flagging work but he never responded to this work opportunity after receiving notice of it. The record in this proceeding does not support deviating from precedent in Awards 54 and 152. Thus, the claim is denied.

Award

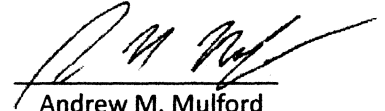
Claim denied.



Patrick Halter
Neutral Member



Rob Miller
Carrier Member



Andrew M. Mulford
Organization Member

Signed on this 26th day
of January, 2016