

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

Brotherhood of Maintenance of Way)	
Employees Division, IBT Rail Conference)	
)	Case No. 175
and)	Award No. 175
)	
CSX Transportation, Inc.)	

Statement of Claim

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned junior employee T. Stanley to perform assistant foreman flagging work on August 24, 25 and 26, 2012 without calling and offering the work to senior Claimant B. Hendrickson (System File G35711312/2012-133110 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant B. Hendrickson ‘... shall now be paid for thirty one and a half (31.5) hours overtime at his respective overtime rate of pay.’ (Employees’ Exhibit ‘A-1’).”

Background

Claimant and Employee Stanley both maintain seniority in the assistant foreman class on the Appalachian Division. Measured by seniority to Claimant, Employee Stanley is the junior employee.

According to the Organization, the Carrier required the temporary services of an assistant foreman to perform flag duties for a contractor between Mile Posts OOKC11.8 and OOKC12.5. BMW asserts that the Carrier assigned junior employee Stanley in violation of Rule 3 - Selection of Positions, Rule 4 – Seniority (preference for filling temporary vacancies to senior qualified available working in a lower rated position or the same grade or class) and the Memorandum of Agreement (MOA) at Section 8 - Flagging Work.

MOA Section 8.A.1 states that “when flagging work is required in connection with Track Department work or other work that holds the potential to undermine the integrity of the roadbed or track structure, an Assistant Foreman - Flagman from the Track Department shall be assigned in accordance with Rule 3, Section 3 or 4, as applicable.”

The Organization asserts that the Carrier did not provide payroll records during on-property exchanges as requested by the Organization. Instead, the Carrier waited until the moment before the docketing of this dispute with the Board to issue its post-conference letter with payroll records attached. This effectively precluded the Organization from responding on-property.

The Carrier states that the claimed work was assigned in accordance with the Agreement and MOA. That is, the Carrier determined that flagging was required for a contractor and it opened a temporary vacancy

for an assistant foreman - flagman in accordance with Rule 3 and awarded the position to Employee Stanley, a machine operator, in accordance with Rule 3, Section 4.

In support of its position, during conference the Carrier disclosed to the Organization the payroll records for the junior employee and Claimant. Payroll records showed employee Stanley's position (machine operator) at the same class or grade as an assistant foreman whereas Claimant's position (foreman) was a higher class than the advertised position. Claimant could be awarded this temporary position only if all other available employees in the same class had declined it. The Carrier observes that the Organization advocated the Carrier's position in Award 162 of this Board: "According to the organization, an employee in a higher (foreman) classification cannot be used when there is an employee in an equivalent (assistant foreman) or lower classification available."

Findings

Public Law Board 7163, upon the whole record and all the evidence, finds that (1) the parties to this dispute are Carrier and Employee 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.

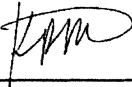
The Board finds, further, that during conference the Carrier and Organization discussed the payroll records for the junior employee and Claimant. The Carrier states it provided copies of those records at that time to the Organization and, again, with a post-conference letter. Although BMW disputes receipt of copies during conference, there is no dispute that the matter was discussed and the Organization knew the Carrier's position, e.g., payroll records show the junior employee working as a machine operator, a position at the same grade or class as the advertised assistant foreman - flagman.

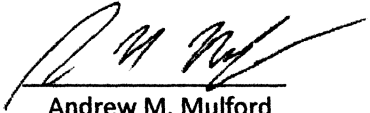
The discussion at conference established each party's position addressing the junior employee's class and work in August 2012 and such discussion enabled each party to fully develop and present argument in its submission to the Board. The Carrier's post-conference letter, with the payroll records attached, does not deviate from its representations during discussion at conference. The payroll records are properly before the Board.

Rule 3, Section 4 clearly states that "the senior qualified employee will be given preference, whether working in a lower rated position or in the same grade or class." Claimant was working as a foreman at the time this temporary vacancy opened for an assistant foreman - flagman. The foreman position is a higher class or grade than the assistant foreman position. Since Claimant was in a higher classification than the advertised assistant foreman position, he could not fill a temporary vacancy as an assistant foreman - flagman. The junior employee, however, was working as a machine operator which is the same grade or class as the advertised assistant foreman. Given these findings, the junior employee received preference in accordance with Rule 3, Section 4. As the Carrier complied with the Agreement, the alleged rules violations are 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