

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

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| Brotherhood of Maintenance of Way |) | |
| Employees Division, IBT Rail Conference |) | |
| |) | Case No. 178 |
| and |) | Award No. 178 |
| |) | |
| CSX Transportation, Inc. |) | |

Statement of Claim

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when it assigned junior and out of district employee S. Clemons to perform assistant foreman flagging duties for an outside contractor on the Henderson Seniority District on October 16 and 17, 2012 and failed to assign such to Claimant A. Foushee (System File I63712512/2012-133817 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant A. Foushee shall now ‘... be paid for sixteen (16) hours straight time, and two and a half (2.5) hours overtime at his respective straight and overtime rates of pay.’ (Employees’ Exhibit ‘A-1’).”

Background

Claimant maintains seniority as an assistant foreman on the L&N Henderson Seniority District (LH&STL); he is qualified to provide track protection/flagging in his district. Employee Clemons maintains seniority as an assistant foreman on the L&N Louisville Seniority District (LL&STL); he is qualified to provide track protection/flagging in his district.

According to the Organization, on October 16 and 17, 2012 the Carrier required flagging services on a temporary basis for a contractor working between Mile Posts OHR 7.0 and OHR 7.1 on the Louisville Division. BMW states this work was located on Claimant’s seniority district (LH&STL) but the Carrier assigned Employee Clemons even though he has no seniority in Claimant’s district.

On October 29, 2012 the Organization filed a claim alleging that the Carrier’s assignment of Employee Clemons violated Rule 1 - Scope, 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 seniority rights are confined to the employee’s seniority district).

Also violated, BMW asserts, was the Memorandum of Agreement (MOA) at Section 8 - Flagging Work which, in 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.”

Although requested, BMW notes that the Carrier failed to produce evidence showing that Employee Clemons was entitled to this work. BMW concludes that the Carrier assigned out-of-district Employee Clemons to Claimant's seniority district in violation of the Agreement and contrary to precedent in on-property Third Division Awards 28353 and 33850 and Award 14 of this Board.

The Carrier denies all allegations. In support of its position, the Carrier relies on the Roadmaster's statement -- "at no time did he [Clemons] violate Rule 4 by working on the Henderson Seniority District." Additionally, the Carrier notes that at the time of this claim Claimant was working as a Foreman and Employee Clemons as an assistant foreman. Under Rule 3, Claimant would not have been entitled to perform this work because he was in a higher classification (foreman). MOA Section 8 states that flagging work must be performed by an assistant foreman.

Employee Clemons, the Carrier asserts, has seniority in the Louisville Yard where he performed the flagging work. This work was not performed on Claimant's seniority district. The Carrier states it complied with the Agreement and MOA; the claim should be denied.

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.

On December 14, 2012 the Carrier denied the claim stating, in part, as follows:

Rule 4, Section 5, identifies the seniority districts which identifies where certain positions are allowed to work. The Rule starts off with the statement "*The seniority rights of employees are confined to their respective seniority districts...*". During the days that Mr. Clemons was flagging, he was assigned to a position on the L&N Seniority District. During the same period of time, Mr. Foushee was assigned to a position on the L&N Henderson Seniority District (LH&STL). Neither employee would have the right to cross into the other's district. However, based on an email statement from Roadmaster Dave Dollins, Mr. Clemons was flagging in the Louisville Yard and at no time did he violate Rule 4 by working on the Henderson Seniority District. I have included a map that shows the proximity of the Louisville Yard to the milepost OHR 7.0 where the alleged violation occurred. The L&N Henderson District ends at milepost OHR 6.0 and this is where Mr. Clemons was flagging.

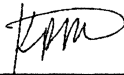
In reviewing the Organization's appeal to the claim denial, BMW does not contest the accuracy of the map provided by the Carrier defining the seniority districts and showing the Louisville Yard in the

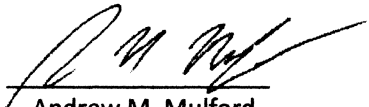
seniority district of Employee Clemons and not in the seniority district of Claimant. Given the undisputed map and seniority districts, the Board finds that the Carrier did not violate Rule 4, Section 5 and, on that basis, will deny the claim.

Award

Claim denied.


Patrick Halter
Neutral Member


Rob Miller
Carrier Member


Andrew M. Mulford
Organization Member

Signed on this 26th day
of January, 2016