

AWARD NO. 181

Case No. 181

Organization File No. I57708512

Carrier File No. 2012-130233

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 General Roadmaster D. Smith to operate a machine (trackhoe) to move and grade ballast at Mile Post 175.1 on the Nashville Division on August 14, 15, 16 and 17, 2012 and failed to assign such work to Claimants V. Reed, D. Warf, G. Belcher or J. Bradley.
2. As a consequence of the violation referred to in Part 1 above, Claimants V. Reed, D. Warf, G. Belcher and J. Bradley shall now be compensated "eight (8) hours straight time, each, at his respective straight time rate of pay."

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.

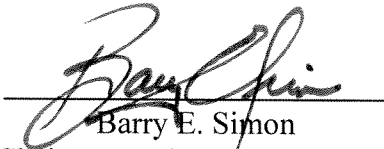
The Organization asserts, and the Carrier does not deny, that General Roadmaster D. Smith operated a trackhoe to move and grade ballast. Smith is a supervisor and is not a covered employee under the BMW Agreement. The Carrier does not dispute that this work was reserved to the BMW craft and should have been performed by a covered employee. It argues, however, that the

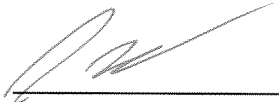
Organization incorrectly states the amount of work performed by Smith. According to the Carrier, Smith performed six hours of covered work on August 15 and four hours of covered work on August 17, 2012. The Organization has offered no evidence that any additional work was performed by Smith.

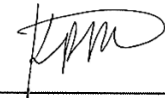
The Carrier, while acknowledging that the Agreement had been violated, asserts Claimants are not entitled to compensation because it had already compensated the senior machine operator, T. W. Anderson, for the work performed. We do not find that to be a valid defense to the claim. The Organization is the party responsible for policing the Agreement, and it has the right to name a claimant when it alleges a violation of the Agreement. The Carrier is not at liberty to determine unilaterally which employee should benefit from its contractual violation. The Third Division, NRAB has held on a number of occasions that one of a group entitled to perform the work may prosecute a claim even though there may be other employees in a preferred position. See Award Nos. 6949, 10575, 18557, 19067, 20090, 25918 and 30657. Any payment made to Machine Operator Anderson was gratuitous and does not bar the Organization's right to file a claim and name its claimants, nor does it constitute a settlement of the claim. If the Carrier wished to prevent the filing of a claim, the correct approach would have been to negotiate a settlement with a duly accredited representative of the Organization.

We find that a total of ten hours of covered work was performed by General Roadmaster Smith in violation of the Agreement. Accordingly, we will direct that each named Claimant be compensated 2.5 hours' pay at the appropriate overtime rate.

AWARD: Claim sustained in accordance with the above Finding. The Carrier is directed to comply with this Award within forty-five days.


Barry E. Simon
Chairman and Neutral Member


Andrew Mulford
Employee Member


Rob Miller
Carrier Member

Dated: January 27, 2016
Arlington Heights, Illinois