

AWARD NO. 182

Case No. 182

Organization File No. I56711912

Carrier File No. 2012-133420

**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 CSXT inappropriately assigned Track Inspector Bray to perform flagging duties on October 1 through October 13, 2012 between Mile Posts 235.5 and 245.6, Hopkinsville, Kentucky on the Nashville Division and failed to offer or assign Claimant R. Soyk.
2.     As a consequence of the violation referred to in Part 1 above, Claimant R. Soyk shall be paid all hours (straight time and overtime) worked by Track Inspector Bray while filling the flagging position during the time period listed above.

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.

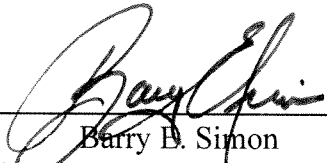
The Organization asserts the Carrier violated the Agreement by assigning Track Inspector G. Bray to fill an assistant foreman temporary vacancy between October 1 and October 13, 2012, although Claimant had greater seniority as an assistant foreman. The instant claim was filed by the Organization by letter dated October 17, 2012. The Organization notified the Carrier by letter dated

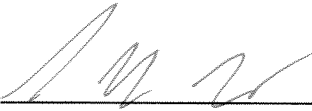
February 5, 2013 that the claim had not yet been answered. It asks that the claim now be allowed as presented in accordance with Rule 24(a) of the Agreement. That provision states:

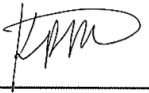
A claim or grievance must be presented, in writing, by an employee or on his behalf by his union representative to the Designated Officer, or other designated official within sixty (60) days from the date of the occurrence on which the claim is based. The Designated Officer, or other designated official shall render a decision within sixty (60) days from the date same is file, in writing, to whoever filed the claim or grievance (the employee or his union representative). When not so notified, the claim will be allowed.

Based upon the record before us, we find that the Carrier, during the handling of the claim on the property, had offered no defense to the Organization's allegation that no decision on the claim was rendered within the time limit. While the Carrier addressed this issue before the Board, we may not consider it as it was a new argument. We must, therefore, sustain the claim as presented, without regard to the merits.

AWARD: Claim sustained. The Carrier is directed to comply with this Award within forty-five days.

  
Barry B. Simon  
Chairman and Neutral Member

  
Andrew Mulford  
Employee Member

  
Rob Miller  
Carrier Member

Dated: January 27, 2016  
Arlington Heights, Illinois