

AWARD NO. 183

Case No. 183

Organization File No. B10711612

Carrier File No. 2012-133518

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, beginning on August 20, 2012 and continuing, the Carrier assigned junior employee D. Cochran to fill a temporary track inspector vacancy and perform FRA track inspections in the Boyles Terminal and failed to properly assign such to Claimant C. McCroy.
2. As a consequence of the violation referred to in Part 1 above, Claimant C. McCroy shall now be allowed all hours (including overtime) worked by junior employee Cochran, beginning August 20, 2012 and continuing until the violation stops, at the respective straight and overtime rates 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.

It is undisputed that the Carrier had a temporary Track Inspector vacancy that Claimant could have held, based upon his seniority. The vacancy was filled, however, by an employee with less seniority. The Organization now argues the work should have been offered to Claimant.

In advancing their claim, the Organization relies upon Rule 3 - Selection of Positions, reading, in pertinent part, as follows:

Section 1. Assignment to position

In the assignment of employees to positions under this Agreement, seniority shall govern. The word "seniority" as used in this Rule means, first, seniority in the class in which the assignment is to be made, and thereafter, in the lower classes, respectively, in the same group in the order in which they appear on the seniority district roster. . . .

Section 4. Filling temporary vacancies

(a) A position or vacancy may be filled temporarily pending assignment. When new positions or vacancies occur, the senior qualified available employees will be given preference, whether working in a lower rated position or in the same grade or class pending advertisement and award. When furloughed employees are to be used to fill positions under this Section, the senior qualified furloughed employees in the seniority district shall be offered the opportunity to return to service. Such employees who return and are not awarded a position or assigned to another vacancy shall return to furlough status.

* * *

(f) Vacancies which are not advertised may be filled in like manner.

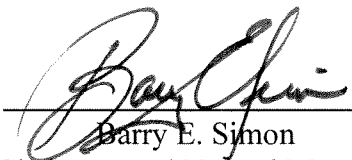
We addressed this issue in Award No. 54, wherein we wrote:

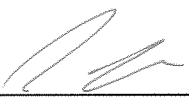
The provision is not specific as to whether the work must be offered to the senior employee or given to the senior employee who requests it. We note, however, that the parties specifically provided for offering the work in Rule 17, but did not in Section 4 of Rule 3. Rather, the provision merely states that "the senior qualified available employees will be given preference." In the case of furloughed employees, the provision goes on to require the Carrier to offer the senior employees the opportunity to return to work. We find the absence of the requirement to offer the work to active employees to be significant. To place that requirement into the rule, where the parties could have done so if that was their intent, would effectively amend the Agreement. This Board does not have the power to do so.

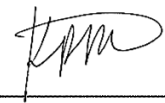
We must find, therefore, that the Carrier had no obligation to assign the work to employees who had not requested it. There is no assertion that Claimant requested the work, and we find, therefore, that he was not entitled to the earnings of the assignment. The Agreement was not violated.

In the instant case, there is a factual dispute as to whether Claimant had requested the work in question. The Carrier asserts he had expressed no interest in filling the position. It notes that Claimant had earned more on his own job than he would have received had he filled the vacancy. Inasmuch as we are unable to determine that Claimant actually requested the work, we find that the Organization has not met its burden of proving the existence of a violation of the Agreement. We must, therefore, deny the claim.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Andrew Mulford
Employee Member


Rob Miller
Carrier Member

Dated: January 27, 2016
Arlington Heights, Illinois