

AWARD NO. 184

Case No. 184

Organization File No. B16164213

Carrier File No. 2013-146831

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, on May 8, 2013, the Carrier assigned junior employee C. Williams to fill an assistant foreman temporary vacancy on the Jacksonville Seniority District and failed to properly assign Claimant C. Burrell thereto.
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Burrell shall be compensated for ‘. . . **eight (8) hour straight and eight (8) hours overtime *****’ (Emphasis in original).

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.

On May 8, 2013, Track Inspector C. Williams performed flagging work in connection with the installation of a gas line at MP SX 956.0 of the Auburndale Subdivision. This work was performed between the hours of 4:00 am and 10:00 pm. Claimant, who holds Assistant Foreman seniority but was working as a Machine Operator, had asked his Assistant Roadmaster if he could

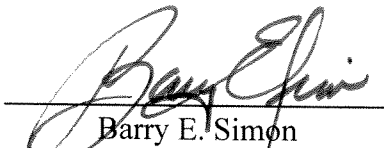
perform this work. His request was denied. The Organization now seeks the compensation Claimant would have received had he performed this work.

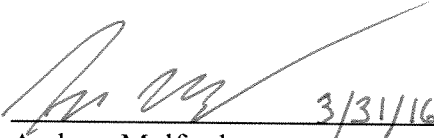
The Carrier has offered two defenses to this claim. First, it denies Claimant was available for the work because he was attending a mandatory training session. The Organization questioned this and asked the Carrier to provide documentation to show that Claimant was actually in training. In conference, the Carrier responded with a document showing that May 8 was a scheduled training day, but the document does not establish that Claimant was one of the employees being trained. The Carrier did not present an attendance list or payroll records to show that Claimant was unavailable. Consequently, we must find that this defense fails for lack of proof.

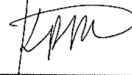
Secondly, the Carrier has averred that the work performed by Track Inspector Williams was incidental to and part of his regular assignment. While such an argument might be persuasive if Williams had been performing his Track Inspector duties and the flagging was done during his regular work hours, the facts in this case suggest that he did nothing but flagging. Furthermore, he began this work well before his regular starting time, and continued well beyond the end of his regular day. We cannot find, therefore, that the flagging work was part of his regular job.

We find that this was a temporary vacancy. As such, it should have been assigned to the senior available and qualified employee working in the same or lower class. Flagging is Assistant Foreman work, and Williams, as a Track Inspector, was working in a higher rated position. He was not the proper employee to be used for the temporary vacancy. We find that Claimant should have been assigned the work and the failure to do so was a violation of the Agreement. He is entitled to the earnings he would have received had he been permitted to perform the work.

AWARD: Claim sustained. Carrier is directed to comply with this Award within 45 days.


Barry E. Simon
Chairman and Neutral Member

 3/31/16
Andrew Mulford
Employee Member


Rob Miller
Carrier Member

Dated: March 15, 2016
Arlington Heights, Illinois