

AWARD NO. 186
Case No. 186

Organization File No. WinterC.012
Carrier File No. 2012-136305

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 CSX inappropriately assigned junior employee S. Carter to fill an assistant foreman flagging temporary vacancy on November 1, 2, 5, 6 and 7, 2012 on the Albany Service Lane and failed to offer or assign Claimant R. Winter.
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Winter shall now be compensated for fifty-two (52) hours at his overtime rate.

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 has filed this claim because the Carrier assigned Track Foreman S. J. Carter to fill a temporary vacancy to perform flagging while NYSDOT employees installed new highway signs on a CSX railroad bridge. Foreman Carter is junior in seniority to Claimant. In support of its

position, the Organization cites Rule 3, Sections 1 and 4 of the Agreement, which read, 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. . . .

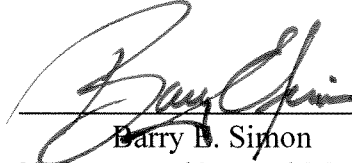
Section 4. Filling temporary vacancies

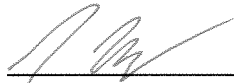
(a) A position or vacancy may be filled temporarily pending assignment. When new positions or vacancies occur, the senior qualified available employees will be given preference, whether working in a lower rated position or in the same grade or class pending advertisement and award. When furloughed employees 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.

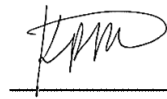
In denying the claim, the Carrier has argued that Claimant was not available for this vacancy because he was working a critical position at the time and could not be released from it. The Organization has not refuted this argument.

Under Rule 3, Section 4(a), it is not sufficient that the employee who is given preference for a temporary vacancy be senior and qualified; he must also be available. We find, based upon the record before us, that Claimant would have had to vacate his position in order to fill the vacancy. Furthermore, we find there were no other employees on the territory at that time who were qualified and available to backfill his position. Had the Carrier been required to release Claimant, it would have disrupted operations. Therefore, we agree with the Carrier that Claimant was not an available employee. He was, therefore, not eligible for the temporary vacancy and the Carrier's failure to offer the work to him was not a violation of the Agreement.

AWARD: Claim denied.


Barry B. Simon
Chairman and Neutral Member


Andrew Mulford
Employee Member


Rob Miller
Carrier Member

Dated: January 27, 2016
Arlington Heights, Illinois