

AWARD NO. 199

Case No. 199

Organization File No. B16169113

Carrier File No. 2013-150411

PUBLIC LAW BOARD NO. 7163

PARTIES) BROtherHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,
TO) INTERNATIONAL BROtherHOOD OF TEAMSTERS
DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. The Agreement was violated when, on August 24, 25, September 7 and 8, 2013, the Carrier assigned Track Inspectors M. Campbell, K. Taylor and G. Pittman to fill an assistant foreman flagman temporary vacancy on the Jacksonville Seniority District and failed to properly offer preference for such to Claimant R. Mamula.
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Mamula shall be “. . . allowed forty seven (47) hour overtime. . . .”

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 Saturday and Sunday, August 24 and 25, 2013, and again on Saturday and Sunday, September 7 and 8, 2013, the Carrier had a temporary vacancy for a flagman for contractors working in the vicinity of Auburndale, Florida. The Carrier assigned Track Inspectors M. Campbell and K. Taylor on these weekends. Claimant, who is senior to these employees, was assigned as a Machine

Operator on Team 5A28 at the time. Claimant also holds seniority as an Assistant Foreman. The Organization has filed this claim asserting that Claimant should have been used for these vacancies based upon his greater seniority.

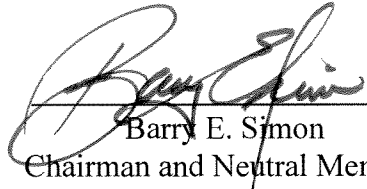
The Carrier argues, and the Organization does not deny, that Claimant was not qualified on the territory where the work was performed. The record before the Board contains a statement from Claimant acknowledging that he had worked on this subdivision and knows the territory, and “would only need to be qualified over the section in question; SX 820.8 to SX 832.7.” The Organization argues the record “confirms that in the three (3) years leading up to the instant dispute that the Carrier unreasonably denied Claimant’s repeated requests to be qualified . . . , with his supervisor making it clear he was refusing to note Claimant’s qualification on the Carrier’s system so as to continue using him as a backhoe operator.”

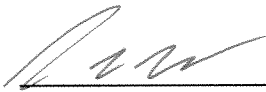
We find the Carrier’s defense to be valid. It is not required to place an unqualified employee on a temporary vacancy that exists solely to protect the safety of the contractor’s employees, the Carrier’s employees and property, and the public. Rule 3, Section 4 (a) states:

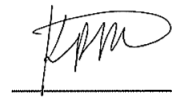
A position or vacancy may be filled temporarily pending assignment. When new positions or vacancies occur, the senior *qualified* available employees will be given preference, whether working in a lower rated position or in the same grade or class pending advertisement and award. (emphasis added)

If Claimant had a legitimate complaint that the Carrier was improperly or unfairly denying him the opportunity to become qualified on this territory, his recourse could be found in other provisions of the Agreement. In the case before us, though, we must find that the Agreement was not violated.

AWARD: Claim denied.


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