

AWARD NO. 219

Case No. 219

Organization File No. G25808013

Carrier File No. 2013-144256

**PUBLIC LAW BOARD NO. 7163**

PARTIES ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION,  
          ) INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
TO )  
      )  
DISPUTE ) CSX TRANSPORTATION, INC.

**STATEMENT OF CLAIM:**

1. The Agreement was violated when, on March 18, 19, 20, 21, 25, 26 and 27 and April 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, 2013, the Carrier offered preference to and assigned Track Foreman C. Smith to fill a temporary assistant foreman - flagman vacancy and provide track protection near Mile Posts BA 210.0 and 210.0 on the Cumberland Seniority District.
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Sisler shall now be compensated "... the same amount of hours expended by employee CA Smith during the period claimed herein, including to but not limited to the higher straight time rate of pay that was paid to employee Smith, and the same amount of overtime (87) hours, at the appropriate time and one half rate of pay in effect during the period claimed. \*\*\*"

**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 argues the Carrier violated the Agreement by utilizing a Track Foreman to fill a temporary assistant foreman - flagman vacancy. It insists Track Foreman C. A. Smith was

required to step down to a lower rated position to perform this work, while Claimant, who held seniority as an assistant foreman and was qualified as a flagman, was working in the lower rated classification of vehicle operator. It submits that the Carrier violated Question and Answer 26 to the parties' August 23, 2007 Memorandum of Agreement, which states:

26. Question

May an employee step down in class to take a temporary flagging position?

Answer

No, see Rule 3, Section 4(a) of the June 1, 1999 Agreement.

The Carrier has responded that Track Foreman Smith was working at a derailment clean-up project on the dates in question, and held track time for all of the crews who were working in the derailment area. Consequently, it argues that the work performed by Smith was permitted pursuant to Question and Answer 22 of the same Memorandum of Understanding, which states:

22. Question

If the Foreman of a two-man gang consisting of the Foreman and Machine Operator has 707 authority and another gang is assigned to work within the zone covered by the 707 authority, is an Assistant Foreman - Flagman necessary?


Answer


No, both gangs may work within the Foreman's 707 authority.


The Carrier acknowledges that there may be some dates of claim when Foreman Smith and his team were working at another location. Claims for those dates would be valid, but the record does not indicate which they are. Accordingly, it is the Board's decision that the claim should be remanded to the parties to identify, if such information is available, when Foreman Smith's gang was working with any other gangs. On those dates, the claims should be denied. On any dates when it

cannot be determined that Smith's gang was working with another gang, the Carrier's defense does not have merit and the claims should be paid.

AWARD: Claim remanded in accordance with the above Findings.

  
Barry E. Simon  
Chairman and Neutral Member

  
Andrew Mulford  
Employee Member

  
Rob Miller  
Carrier Member

Dated: 10/19/16  
Arlington Heights, Illinois