

AWARD NO. 228  
Case No. 228

Organization File No. B16166513  
Carrier File No. 2013-149439

**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 August 3, 4 and 6, 2013, the Carrier offered preference to and assigned off district employee E. Schofield to fill a temporary assistant foreman - flagman vacancy and provide track protection on the Jacksonville Seniority District.
2.     As a consequence of the violation referred to in Part 1 above, Claimant Z. Yohn shall now be compensated for eight (8) hours' straight time and twenty-eight (28) hours' overtime at his respective rates of pay and continuous until the violation stops.

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.

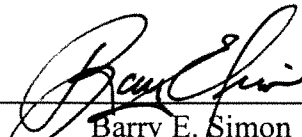
The Organization claims the Carrier assigned E. D. Schofield to fill an assistant foreman - flagman temporary vacancy on the Jackson Seniority District on August 3 and 4, 2013. This flagging work was in connection with an outside contractor monitoring a chemical spill due to a previous derailment. On August 6, 2013, Schofield was again used to perform flagging for a contractor

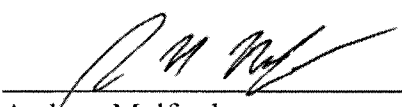
excavation in the vicinity of Plant, Florida. Asserting that Schofield does not have seniority as an assistant foreman on the Jackson District, the Organization argues it was improper to assign him to these vacancies. Instead, the Organization argues Claimant should have been assigned. It says he was regularly assigned as an assistant foreman working on Team 5A28 on the Jacksonville Seniority District and was fully qualified to perform this work.


The Carrier notes first that Schofield was senior to Claimant as an assistant foreman and was also qualified to perform flagging work. In fact, it says he had bid into the floating assistant foreman - flagging position created to cover flagging for outside party jobs. It further states he had system-wide seniority rights through this position.

The Organization has asserted that Schofield had been displaced from the floating flagman position, and the Carrier has, throughout the handling of the claim, maintained that he was assigned to it. It was, therefore, incumbent upon the Organization to prove that Schofield had been displaced. Its mere assertion that this was the case is insufficient to prove that Schofield had no entitlement to the work. Consequently, we are unable to find that the Agreement was violated.

AWARD: Claim denied.

  
Barry E. Simon  
Chairman and Neutral Member

  
Andrew Mulford  
Employee Member

  
Rob Miller  
Carrier Member

Dated: 10/19/16  
Arlington Heights, Illinois