

AWARD NO. 231

Case No. 231

Organization File No. B16164113

Carrier File No. 2013-146848

**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 May 8, 2013, the Carrier offered preference to and assigned Floating Welder J. Gibbons 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 M. Anthony shall now be compensated for eight (8) hours' straight time and eight (8) hours' overtime at his respective rate of pay.

**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 asserts the Carrier assigned Welder J. Gibbons to a temporary flagging vacancy at Mile Post SX 946.2 on May 8, 2013. Insisting that Gibbons does not have seniority in the Track Department as an assistant foreman, the Organization claims Claimant should have been used instead.


The Carrier raises two defenses to this claim. First, it notes that Claimant was taking his mandatory annual Operating Rules class on the date of claim. Therefore, it says he would have been unavailable for this work. The Carrier cites Award No. 186 of this Board, wherein we held "it is not sufficient that the employee who is given preference for a temporary vacancy be senior and qualified; he must also be available."


Secondly, the Carrier denies Gibbons performed flagging on this date. Instead, it explains it was necessary for him to secure track time to perform his welding work. Because he held track authority, it would not be possible for a flagman to work, as well.

We find that both of the Carrier's arguments have merit. Accordingly, we cannot 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