

Public Law Board 7163

**PLB No. 7163
Award No. 235**

Parties to Dispute:

**Brotherhood of Maintenance of Way Employees Division
IBT Rail Conference**

And

CSX Transportation, Inc.

Statement of Claim: *"Claim of the System Committee of the Brotherhood that:*

- 1. The Agreement was violated when the Carrier offered preference to and assigned Track Inspectors M. Campbell, M. Pittman, K. Taylor and T. Perry to fill assistant foreman temporary vacancies and perform flagging work on May 4, 12, 17, 19, 24, 25, 26, June 1, 2, 14 and 15, 2013 and continuing (System File B16163813/2013-146576 CSX).*
- 2. As a consequence of the violation referred to in Part 1, above, Claimant Z. Yohn shall now be compensated for two hundred eight (208) hours at his respective overtime rate of pay."*

Findings:

The Carrier or Carriers and the Employee or Employees involved in this dispute are, respectively, Carrier or Employee within the meaning of the Railway Labor Act as approved June 21, 1934. Public Law Board 7163 has jurisdiction over the parties and the dispute involved, herein.

The Organization presented a claim alleging that notwithstanding Claimant Yohn's seniority and qualification in the job classification – Assistant Foreman on Team 5A28 on the Jacksonville Seniority District – in question during the time of this dispute, and that he had expressed a desire to occupy that position – temporary flagging vacancy – Carrier offered preference to and assigned Track Inspectors M. Campbell, M. Pittman, K. Taylor and T. Perry to those temporary vacancies that provided track protection for work near Mile Post SX 831.7 on the Jacksonville Seniority District.

In support of its claim, The Organization relied on Memorandum of Agreement (MOA) signed May, 9, 2007. The MOA reads in pertinent part:

B Section 8 – Flagging Work A (1). *When flagging work is required in connection with Track Department work or other work that holds the potential to undermine the integrity of the roadbed or track structure, an Assistant Foreman – Flagman – from the Track Department shall be assigned in accordance with Rule 3, Section 3 or 4, as applicable.*

To undergird its position, the Organization pointed out that the employees assigned to the Flagman positions were Track Inspectors, thereby, higher classified positions with higher rates of pay than Flagmen. The Organization, then, drew our attention to the MOA Agreement prohibiting a Track Inspector from stepping down to occupy a temporary flagging position. MOA reads in pertinent part:

B Section 8 – Flagging Work 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's gravamen argument appeared to be that it did not offer Claimant preference to the temporary vacancy because it determined Claimant was unavailable. Carrier took the position that Claimant was working elsewhere and could not have performed the work on the site at which it occurred. It maintained that under those circumstances, Rule 3, Section 4 language requires Claimant is senior, qualified, and available, his superior seniority, notwithstanding.

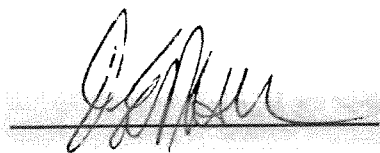
This Board has thoughtfully reviewed and considered all the evidence properly, and timely, presented before it; and is now, sufficiently, acquainted with the nature of this dispute to issue an opinion.

In the dispute that has been handed this Board for its consideration, the only probative evidence on record is a written statement by the Claimant speaking directly to his availability for the work at issue. No probative evidence was on record refuting this assertion. Therefore, the Board rejects the Carrier's rationale for giving preference to and assigning the temporary vacancies to employees out of seniority order.

This Board concurs with the Organization that the temporary vacancies were wrongfully filled, and that such action violated the contractual rights of the Claimant. The appropriate remedy for such a violation is to compensate the Claimant in the amount of wages he, reasonably, would have earned absent the contract violation.

Award:

Claim is sustained in accordance with the findings. The Carrier is directed to implement this award within thirty (30) days of its full execution.



J. E. (Jim) Nash, Arbitrator, Inc.
Chairman and Neutral Member



Katrina Donovan
CSX Transportation, Inc.

Carrier Member



Andrew M. Mulford
BMW

Organization Member

Dated this 23 day of December 2017