

Parties to Dispute:

Brotherhood of Maintenance of Way Employees Division
IBT Rail Conference

And

CSX Transportation, Inc.

Statement of Claim:

1. The Agreement was violated when, commencing September 30, 2013 and continuing, the Carrier offered preference to and assigned junior employee D. Reinhold to fill a temporary machine operator vacancy and operate a ballast regulator at various mile posts on the Chicago Division (System File H42711613/2013-152381 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant T. Stone shall now be compensated for all straight time and overtime worked by junior employee D. Reinhold beginning on September 30, 2013 and continuing until the violation ceases."

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 Carrier raised several objections having to do with time latches procedural errors, to which this Board assigns no weight or credibility and will not address them further.

Organization's claim on the merits centered around its conviction that the Carrier unlawfully offered preference to and assigned a junior employee (D. Reinhold) to a temporary machine operator vacancy (ballast regulator) at various locations on the Chicago Division. Organization's proposed remedy to the alleged infraction is to compensate the senior employee (T. Stone) for all straight time and overtime worked by junior employee (D. Reinhold).

The Organization took the position that this dispute must turn on the evidence that established 1) Machine Operator Stone was the senior employee in the grade and class of the vacancy 2) he expressed a desire to assume the vacant position, and 3) he was working in the same grade and class in which the vacancy would be assigned.

The Carrier advanced the argument that in addition to considerations for assignment mentioned by the Organization, the senior employee must, also, satisfy another condition: availability. The Carrier pointed out that Claimant T. Stone, at the time vacancy occurred, was working on an assignment at another location, and was, thereby, unavailable to hold the temporary vacancy at issue. The Carrier

made the ancillary argument that Claimant T. Stone worked overtime, with earnings equal to or more than compensation earned by the junior employee; and, given those facts, Claimant T. Stone would be unable to establish either availability or a monetary loss.

The Organization argued, vehemently, that there are numerous reasons to safeguard the contractual rights of the employee beyond the establishment of a monetary loss. The fact that the employee did not suffer a loss in pay did not blunt the force of its argument to protect the integrity of the agreement. All violations, it insisted, must have a remedy in order to dissuade similar behavior.

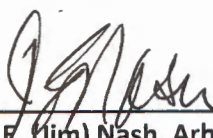
The Organization's dispute, and its very strong sentiment that in the interest of preserving a labor agreement, a suitable penalty should be associated with each violation. This Board believes, however, that in instances where a rule is despoiled, and the offended employee cannot make a compelling argument that he sustained a measurable economic loss, there is little rationale for awarding a monetary remedy.


In the case, now, under this Board's consideration, the claimant earned more money than he would have earned had he been awarded the temporary vacancy he was denied. With respect to the Organization's proposed remedy, there seemed to be substantial friction between the remedy sought and the harm done. Moreover, the Organization did not proffer adequate evidence to persuade the Board that this claim must be regarded as "continuing." Having said that, however, the Board must advise the Carrier that repeated violations would create different circumstances, and, possibly, a different outcome.

This dispute is unusual, but it is not unique. The Organization, *inter alia*, fell short of making the case for its requested remedy. Given all the surrounding facts and circumstances, the Board views this dispute as one in which the alleged harm done was *de minimis* and not companionable to monetary compensation as a practical, just, and equitable remedy. Consequently, the claim must fail. Having said that, however, the Board must caution the Carrier that repeated violations would create different circumstances, and, possibly, a different outcome.

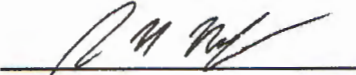
Award:

Claim denied.


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