

AWARD NO. 267
Case No. 267

Organization File No. B17600614
Carrier File No. 2014-163400

PUBLIC LAW BOARD NO. 7163

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

STATEMENT OF CLAIM:

1. The Agreement was violated when, commencing on January 17, 2014 and continuing, the Carrier offered preference to and assigned Track Inspector T. Williams to fill an assistant foreman - flagging temporary vacancy on the Ft. Bragg Spur near Mile Post AE 201 on the Raleigh Rocky Mount Seniority District (System File B17600614/2014-163400 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant S. Damson shall now be paid an equal amount of the man-hours earned by Track Inspector T. Williams at Claimant's respective straight and overtime rates from the start of the violation up to and including the date the violation ceases.

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 filed the instant claim asserting that the Carrier had assigned a Track Inspector to perform flagging work for the protection of workers near Fayetteville, North Carolina beginning on January 17, 2014. It argues Claimant, who was assigned as an Assistant Foreman, held

a preference to perform this work. The Carrier, in its denial of the claim, argued that it was “vague and nonspecific” because it failed to identify the employee who worked the temporary vacancy or the mileposts at which the work was performed. Citing Award 54 of this Board, it further argued Claimant could have displaced to the position.

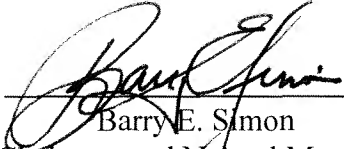
We reject the Carrier’s argument that the claim is too vague and nonspecific to merit consideration. Its reliance upon Award No. 68 of Public Law Board No. 7494 (Dispatchers - CSX) is misplaced. While it is true that the Award gives a list of items that must be furnished in a claim, it is evident that the list is set forth in the parties’ agreement. The applicable Agreement in this case contains no such requirement. Although the Organization had not named the Track Inspector who performed the work, we find it provided sufficient information that would allow the Carrier to determine the identity of that employee. Once the identity of the Track Inspector had been determined, the Organization requested payroll records so it learn more specifically when he had performed the work in question. The Carrier did not comply with the Organization’s request. Consequently, it cannot now argue that the claim lacks information that it refused to provide to the Organization.

Question and Answer 26 to the parties’ May 9, 2007 Memorandum of Agreement makes it clear that an employee may not step down in class to take a temporary flagging position. When Track Inspector Williams took the flagging position, he stepped down to a position that was to be filled by an Assistant Foreman. While it is correct that Question and Answer 26 does not apply when there are no qualified employees available who would not be stepping down, we do not find that to be the case herein. The Carrier has not denied that Claimant was unavailable to perform this


work. Rather, it merely argued he could have displaced to the position. This argument suggests that Claimant was, in fact, available to perform the work.

We do not find Award 54 to be relevant in this case. This was not a matter of which Assistant Foreman had a right to the job. Instead, we find that a violation of the Agreement occurred when the Carrier placed a Track Inspector on the job, contrary to the prohibition in Question and Answer 26 of the MOU. At that point, a claim would be valid for any available and qualified Assistant Foreman. We will direct, therefore, that Claimant be compensated for the difference between what he earned during this period and what he would have earned had he been utilized to perform this flagging work.


AWARD: Claim sustained in accordance with the above Findings. Carrier is directed to comply with this Award within 45 days.



Barry E. Simon
Chairman and Neutral Member



Andrew Mulford
Employee Member



Katrina Donovan
Carrier Member

Dated: 1/9/18
Arlington Heights, Illinois