

AWARD NO. 270  
Case No. 270

Organization File No. I61170513  
Carrier File No. 2013-152483

**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 September 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20, 2013, Carrier offered preference to and assigned Foreman T. Stanton to fill a temporary assistant foreman-flagging vacancy on the Cincinnati Terminal Seniority District (System File I61170513/2013-152483 CSX).
2.     As a consequence of the violation referred to in Part 1 above, Claimant R. Talbott shall now be compensated for eight (8) hours at the applicable straight time rate of pay for each day of the violation as well as forty (40) hours' overtime and eight (8) hours' double time.

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 this claim asserting that the Carrier used a Foreman to fill a temporary flagging vacancy in violation of Question and Answer 26 to the parties' May 9, 2007 Memorandum of Agreement. As we noted in Award No. 267, Question and Answer 26 prohibits the Carrier from

using a Foreman to fill flagging positions which are at the Assistant Foreman rate of pay, *i.e.*, stepping down. The Carrier has denied the work performed was flagging, arguing Foreman Stanton was serving as an Employee in Charge, protecting employees and equipment on the track.

Regardless of whether or not this work constituted flagging (an issue that this Board urges the parties to resolve through negotiation), the Carrier has argued that Claimant was neither qualified nor available to perform this work. The Carrier has documented this assertion with a statement from Roadmaster Burris, stating that Claimant "was not qualified on the territory." We have issued several Awards (particularly 166, 186 and 199) holding that Rule 3, Section 4(a) requires an employee to be both qualified and available to be given consideration for a temporary vacancy. We do not find that the Organization has met its burden of proving that Claimant has satisfied both of these requirements. We cannot, therefore, find that the Agreement was violated.

AWARD: Claim denied.

  
Barry E. Simon  
Chairman and Neutral Member

  
Andrew Mulford  
Employee Member

  
Katrina Donovan  
Carrier Member

Dated: 1/9/18  
Arlington Heights, Illinois