

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 7163

Brotherhood of Maintenance of Way	)	
	)	
Employees Division, IBT Rail Conference	)	Case No. 311
	)	Award No. 311
and	)	
	)	
CSX Transportation, Inc.	)	

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when, starting April 19, 2014, and continuing through May 16, 2014, the Carrier refused to allow Mr. J. Grund to assume a Vehicle Operator position on Team 6KFG and instead assigned Mobile Machine Operator D. Liras thereto (System File H140406714/2014-170298 CSX).

2. As a consequence of the violation referred to in Part 1 above,

Claimant J. Grund ‘...shall now be compensated for one hundred sixty (160) hours of straight time, one hundred thirty-five and one half (135.5) hours of overtime, eight (8) hours of double time, and three (3) meal

periods, at each of their respective rates of pay. Also, that all time be credited towards vacation and retirement.' (Employees Exhibit 'A-1')."

### FINDINGS:

The Organization argues that the Carrier allegedly violated the Agreement when they denied the Claimant to assume a Vehicle Operator position on Team 6KFG. That during the claimed dates, the Claimant was forced to fill a vacancy as a Basic Track Foreman while another employee worked the Claimant's assignment. The Organization further strongly argues that Rule 1 sets forth specific clear guidelines regarding the primary duties of Maintenance of Way positions, which supports the claim. The claim should be sustained in its entirety.

The Carrier responds that the Organization has failed to show the Carrier violated any rules or agreements. The employee assigned to the Grapple Truck was properly assigned. The Claimant, by his own admission was neither Senior, qualified, nor available. Should the Carrier have assigned the Claimant to the position, the Carrier would have been in violation of Rule 4, resulting in claims from other Seniority Districts. In order to meet their burden of proof the

Organization must show the Claimant was Senior, qualified, and available. This the Organization has not done, and the claim should be denied.

The Board has carefully reviewed the record before us and finds no fatal procedural errors. This is one of those cases with a cross contention or disputed facts. The Board is unable to determine which version of the facts is correct. As the Organization has not met their burden of fact, the claim will be denied.

AWARD:

Case denied.



Don A. Hampton  
Neutral Chairman and Referee



Katrina Donovan  
Carrier Member



Andrew M. Mulford  
Employee Member

DATED: July 13, 2018