

**PUBLIC LAW BOARD NO. 7163
CASE No. 349**

**BMW FILE No. B16186616
LCAT No. 2016-212093**

Brotherhood of Maintenance of Way Employees Division)	
Of the International Brotherhood of Teamsters)	
)	
Vs.)	Parties to Dispute
)	
CSX Transportation, Inc.)	

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement when, commencing on September 3, 4, 5, 6 and 7, 2016, the Carrier offered preference to Track Inspector Strickland to perform overtime duties of working with a rail grinder to put out fires on cross ties, road crossings and wooded areas between Mile Posts 700.0 and 710.7 on the Jacksonville Seniority District (System File B16186616/2016-212093 CSX).**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant T. Jones shall ‘... be allowed thirty seven and one half (37.5) hours overtime hours (sic) at this respective rate of pay please advise of the pay period when said payment will be made.’ (Emphasis in original).”**

FINDINGS:

The Board, upon the whole record and all the evidence, finds that the Carrier or carriers and the Employee or Employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934. The Board has jurisdiction over the dispute involved herein. The Parties to said dispute were given due notice of hearing thereon.

On September 3, 4, 5, 6 and 7, 2016, the employee claimed against served as the foreman on Team 5RG7 while working on the Jacksonville Seniority District. The team was regularly assigned to work with the Rail Grinder at night. The Claimant was regularly assigned as a foreman on the Jacksonville Seniority District, and customarily performed the work. The employee claimed against regularly was assigned as track inspector, a higher rated classification than a foreman.

On October 13, 2016, the Organization filed this claim on behalf of the Claimant. The Carrier denied the claim by letter dated December 13, 2016 and the Organization requested the appeal be listed for conference by letter dated December 27, 2016. After the August 23, 2017 conference, the Carrier's Highest Designated Officer denied the appeal by letter dated October 22, 2017. The Organization responded on April 13, 2018. After on-property handling between the parties, the case was mutually listed on PLB 7163 for review.

The Board has reviewed the record developed by the parties during their handling of the claim on the property and considered evidence related to the following to make its determination of this claim:

- 1) Did the Claimant establish by substantial evidence that the Carrier violated the controlling agreement?
- 2) If so, what should the remedy be in the case?

PERTINENT PROVISIONS OF THE AGREEMENT

The pertinent provisions governing this dispute is the Scope, Rule 1, Rule 3, Section 4, Rule 4 and Rule 17 of the Agreement Between CSX Transportation, Inc, and its Maintenance of Way Employees, represented by the Brotherhood of Maintenance of Way Employees, effective June 1, 1999.

MOA 1, Section 8

MOA 3

POSITION OF ORGANIZATION:

- 1) The Organization contends that the Carrier violated the agreement when it failed to advertise the position within at least twenty (20) days of the vacancy. Rule 3, Section 3(a) reads that "all positions and vacancies will be advertised within thirty (30) days previous to or within twenty (20) days following the dates they occur..." Employees then have the opportunity to review on-the-job specifics and bid on the position. The Organization maintains that the Carrier failed to bulletin the vacancy as mandated by the Rule 3, Section 3 (a), in violation of the Agreement.
- 2) The Organization also contends that the Carrier failed to properly offer preference for the temporary foreman vacancy. The Organization argues that

the Claimant maintained foreman seniority, worked foreman positions, and performed foreman duties on the applicable territory. Rule 3 establishes that work assignments will be governed by seniority. The Organization maintains that the Carrier violated the seniority rights of the Claimant when the company permitted a track inspector to fill a temporary vacancy.

- 3) The Organization further contends Rule 3; Section 4 does not allow employees to step down. Question and Answer 26 states that "stepping down" to take a position is prohibited by Rule 3. The employee claimed against is a track inspector; a foreman represents a lower classification.
- 4) Moreover, the Organization contends that the Claimant was deprived of work opportunities and the monetary benefits associated therewith. It is a well-established principle that the proper rates of pay for lost work opportunity are the rates of pay the employee would have received absent the violation of the Agreement. The Organization maintains that arbitral precedent supports the allowance of the claim if a violation of Rule 3 is proven.
- 5) It is the position of the Organization that the claim be sustained as submitted.

POSITION OF CARRIER:

- 1) The Carrier contends that the rail grinder assignments are filled through bulletin and award or displacement, and the claimed against employee was assigned to the Rail Grinder. The Carrier asserts that the employees assigned to the rail grinder work their regular positions and work the rail grinder assignment when it is running through the territory. The claimed against employee was working as the production foreman on the Rail Grinder when it traveled through their territory. The Carrier maintains that no temporary vacancy existed and consequently, the Carrier had no obligation to call the Claimant to offer him the work.
- 2) The Carrier further contends, assuming arguendo, if there was a vacancy, the Claimant did not request to work the position as required by the Agreement. The Carrier asserts that this contention is supported by arbitral precedent.
- 3) The Carrier further asserts that the Organization failed to show any rule violation. More importantly, it is not disputed that the Rail Grinder assignments are by bulletin and award or displacement. The Carrier argues that the Organization failed to present evidence that there was a daily work assignment beyond the production foreman and machine operator positions

assigned to the Rail Grinder, and that the Claimant was senior, qualified, and available.

- 4) Moreover, the Carrier contends that the Organization failed to present evidence on remedy. The Organization presented no evidence to prove that the Claimant would have performed the work, worked on an overtime basis, or that the Claimant suffered any missed work opportunity. Notwithstanding, the Carrier maintains that no remedy is warranted in this case because there was no violation.
- 5) It is the position of the Carrier that the Organization has failed to meet its burden of proof to demonstrate a violation of any rule or Agreement. This claim should be denied in its entirety.

After consideration of this record, the threshold question presented is whether there was a temporary vacancy. The employee claimed against was the Production Gang Foreman awarded the assignment pursuant to the terms of The Rail Grinder Agreement, CSXT Labor Agreement No. 12-053-05, dated November 9, 2005, and the Rail Grinder Night Agreement dated December 21, 2015. The Agreement establishes two positions for each service lane—the Production Foreman and Class “A” Machine Operator. Said positions are bulletined and assigned on a Service Lane basis to work with each Rail Grinder for the calendar year. When the Rail Grinder begins production on a particular Service Lane, the employee holding the position temporarily vacates their regular position in order to work the Rail Grinder. When the Rail Grinder leaves their Service Lane, the employee will return to their regular assignment.

There would be no vacancy unless CSXT will bulletin the vacancy to the appropriate Service Lane and assign the senior applicant for the remainder of the calendar year, according to Paragraph 6 of The Rail Grinder Agreement, CSXT Labor Agreement No. 12-053-05, dated November 9, 2005, which reads that if an employee vacates a Production Foreman or Class “A” Machine Operator position pursuant to Paragraph 5. In this instance, a vacancy may be filled, temporarily pending assignment. In addition, CSXT could determine that additional work must be done to support rail grinding operation and that work would be assigned to BMW represented forces. However, there was no evidence that a vacancy arose in this manner as well.

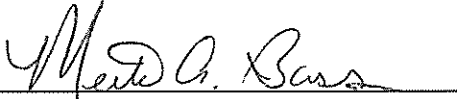
This claim is made against the Foreman assigned to work the calendar year. Therefore, the Board finds there is insufficient evidence presented that a temporary vacancy existed. The Organization bears the burden of proof to establish a violation of the controlling Agreement. The Board finds that the Organization has not met its burden of proof to demonstrate a contractual violation.


AWARD

Claim denied.


ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant not be made


Meeta A. Bass, Neutral Member



Carrier Member
Dated: 5/21/19



Organization Member
Dated 5/21/19