

**PUBLIC LAW BOARD NO. 7163  
CASE No. 352**

**BMWE FILE No. B16186216  
LCAT No. 2016-211200**

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

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- 1. The Carrier violated the Agreement when, commencing on July 20, 2016 and continuing, the Carrier assigned Track Inspectors D. Still and B. Lee to cross seniority districts and inspect track between Mile Posts A635.2 to A640.0 on the Jacksonville/Tampa Seniority District (System File B16186216/2016-211200 CSX).**
- 2. As a consequence of the violation referred to in Part 1 above, Claimants C. Brown and M. Morris be compensated ‘... three (3) hours straight time each claimant each date Beginning July 20, 2016 and continuing until the violation stops at their respective rate. \*\*\*’ (Employees’ Exhibit ‘A-1’).”**

**FINDINGS:**

**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.**

**The Claimants established and hold seniority in the Carrier’s Maintenance of Way Department, and were assigned and working as track inspectors on the Jacksonville/Tampa Seniority District. Claimants ordinarily and customarily perform track inspections. The employees claimed against also hold seniority in the Carrier’s Maintenance of Way Department, and were assigned and working as track inspectors on the Atlanta/Waycross Seniority District. On July 20, 2016 and continuing, the**

Carrier assigned Waycross district track inspectors on to work off their district on the Jacksonville/Tampa Seniority district. The Carrier claimed that payroll records showed one claimed against employee was working a temporary vacancy on the Jax/Tampa Seniority District, and the other employee was working under a voluntary agreement between the Carrier and the Organization. The Carrier did not provide any supporting documentation to the Organization to support its defense.

On September 15, 2016, the Organization filed an appeal on behalf of the Claimants. The Carrier denied the claim by letter dated November 14, 2016. The Organization requested the appeal to be listed for conference by letter dated December 27, 2016. The claim was conferenced on August 23, 2017. After said conference, the Highest Designated Officer denied the appeal on October 22, 2017, and the Organization responded by letter dated October 22, 2017. 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) If so, did the Claimants 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, 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.

**POSITION OF ORGANIZATION:**

- 1) The Organization contends that the Carrier violated the Agreement by assigning employees to cross seniority districts to perform track inspection duties. The Carrier directed two identified employees, whom are regularly assigned to track inspector positions on the Atlanta/Waycross Seniority District, to perform track inspections on the Jacksonville/Tampa Seniority District in

violation of Rule 4, Section 5 which states that seniority rights are confined to their respective districts. The Organization asserts that numerous boards have found that the Carrier's assignment of out of district employees to perform work constitutes a violation of the Agreement.

- 2) The Organization further contends that the Carrier refused and failed to offer any records or supporting evidence to support its assertion of a temporary vacancy or voluntary agreement record. The Carrier cannot enter into special agreements or voluntary agreements with employees that alter the terms and conditions of the Agreement without explicit approval of the designated union representative. The Carrier further failed to explain how a temporary vacancy would allow employees to cross seniority district when it was undisputed that the Claimants were on the applicable seniority district and were able to perform the work during straight time, overtime or otherwise.
- 3) The Organization contends that the requested remedy is proper in light of the Carrier's violation of the Agreement. The remedy serves to protect the integrity of the Agreement by assigning a tangible negative to the Carrier's failure to comply with its contractual obligations.
- 4) It is the position of the Organization that the claim be sustained as submitted.

**POSITION OF CARRIER:**

- 1) The Carrier contends that the Organization failed to show a violation of any rule or Agreement. The Payroll records showed one claimed against employee was working a temporary vacancy and the other worked under a voluntary agreement between the Carrier and the Organization.
- 2) The Carrier further contends that the Organization has provided no evidence regarding seniority, qualification or availability beyond mere assertions.
- 3) Moreover, the Carrier contends that Rule 3 Section 4 does not obligate the Carrier to offer the work to the Claimants; they must request it
- 4) The Carrier lastly argues that no remedy is warranted in this case as no violation of the Agreement has been shown or present any evidence that the Claimants had missed or suffered any lost work opportunity.
- 5) It is the position of the Carrier that the Organization has failed to meet its burden of proof. This claim should be denied.

After careful consideration of this record, the Board has carefully reviewed the record and finds a violation of the controlling Agreement. The Board in this

instance retains jurisdiction on remedy. The parties are directed to promptly meet within the next sixty (60) days to conduct a joint review of records for the purpose of determining the hours involved and the date the violation ceased in accordance with the remedy requested.

**AWARD**

Claim sustained in accordance with these findings.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimants be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.



Meeta A. Bass, Neutral Member



Carrier Member

Dated: 5/21/19



Organization Member

Dated 5/21/19