

AWARD NO. 406
Case No. 406

Organization File No. B16852617
Carrier File No. 17-05474

PUBLIC LAW BOARD NO. 7163

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,
) IBT RAIL CONFERENCE
TO)
)
DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when, on December 2 into December 3, 2017, the Carrier assigned junior employee T. White to perform overtime (flagging) near Mile Post CFP 101.8 near the city of Alexandria, Virginia on the Baltimore Division (System File B16852617/17-05474 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant A. Kozlak shall now be compensated for '... eleven (11) hours of overtime at the Assistant Foreman-Flagman rate of pay and that all time be credited towards vacation and retirement ***' (Employees' Exhibit 'A-1')."

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.

Claimant, A.G. Kozlak, has been employed by the Carrier since December 1, 2014. At all times relevant herein, Claimant held a Welder Track and Structure position. On December 2 and 3, 2017, while Claimant and Welder Helper T. White were on rest days, the Carrier assigned Mr. White to provide track protection, or "flagging", near Milepost CFP 101.8 on the Baltimore

Division. Mr. White was paid for 11 hours, at an overtime rate, for his work on the flagging job.

It is undisputed that Mr. White was junior to Claimant in seniority.

The issue in this matter is whether the Carrier violated the parties' Agreement by assigning this work to Mr. White rather than Claimant. The Carrier contends that there was no violation as the flagging assignment was a temporary vacancy lasting fewer than 20 days, governed by Rule 3, Section 4, Selection of Positions. It provides, in relevant part:

(a) A position or vacancy may be filled temporarily pending assignment. When new positions or vacancies occur, the senior qualified available employees will be given preference, whether working in a lower rated position or in the same grade or class pending advertisement and award. When furloughed employees are to be used to fill positions under this Section, the senior qualified furloughed employees in the seniority district shall be offered the opportunity to return to service. Such employees who return and are not awarded a position or assigned to another vacancy shall return to furlough status.

(b) An employee so assigned may be displaced by a senior qualified employee working in a lower rated position or in the same grade or class, provided displacement is made prior to the starting time of the assigned tour of duty, by notice to the foreman or other officer in charge.

(f) Vacancies which are not advertised may be filled in like manner.

This provision establishes that senior qualified available employees in the same grade or a lower rated position will be given preference for temporary vacancies. It is undisputed that although Claimant was senior to Mr. White, he occupied a higher-rated position than the flagging assignment at issue and, under this provision, was not eligible to fill it.

The Organization asserts, however, that the work at issue was not a temporary vacancy but rather an overtime assignment governed by Rule 17, Preference for Overtime Work, giving Claimant a superior claim to the work based on his greater seniority. It provides, in relevant part:

Section 1- Non-mobile gangs:

(a) When work is to be performed outside the normal tour of duty in continuation of the day's work, the senior employee in the required job class will be given preference for overtime work ordinarily and customarily performed by them. When work is to be performed outside the normal tour of duty that is not a continuation of the day's work, the senior employee in the required job class will be given preference for overtime work ordinarily and customarily performed by them.

(b) If additional employees are needed to assist in the work, other employees located within the seniority district will be offered\called in the order of their seniority, in the required job class.

The Organization bears the burden of establishing the asserted violation. It states that this was clearly overtime work, as Mr. White was paid on an overtime basis, whereas, it stresses, a temporary vacancy is a straight time assignment, performed during normal work hours. The Carrier counters that the fact that an employee is paid overtime for work hours outside his normal shift does not, standing alone, bring that work within the purview of Rule 17.

We have carefully reviewed the record in its entirety. As this is a contract interpretation case, the Organization bears the burden of proving the asserted violation. As the Carrier asserts, the exact question presented in this matter was addressed in another recent award between the parties, Third Division Award No. 44042 (2020), where the Board found, in identical circumstances, that the Organization failed to meet its burden.

The Organization states that the prior award did not include a detailed analysis supporting its conclusion and should therefore not be given precedential effect, making it appropriate for this Board to revisit the question. We disagree.

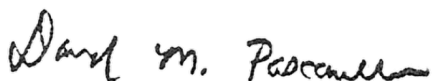
The Organization's primary argument here is that as the work in question was performed on an overtime basis rather than as straight time during the regular work day, Rule 17, rather than Rule 3, governs, requiring that the work be assigned on a seniority basis to Claimant. However, as recited in the Third Division award, the work in question there was assigned in exactly the same

way, on an overtime basis on the employee's rest day. Therefore, in concluding that the Organization had failed to meet its burden of proving that this assignment was governed by Rule 17, it is clear that the Third Division considered, and found insufficient, the same arguments made by the Organization in this case. The Board has not been provided any contrary authority. We are therefore bound by that result and deny the claim on that basis.

AWARD: Claim denied.

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Jacalyn J. Zimmerman
Neutral Member

A cursive signature of David M. Pascarella in black ink, positioned above a horizontal line.

David M. Pascarella
Employee Member

A cursive signature of John Nilon in black ink, positioned above a horizontal line.

John Nilon
Carrier Member

Dated: June 25, 2021