

**NATIONAL MEDIATION BOARD**

**PUBLIC LAW BOARD NO. 7163**

**CASE NO. 428**

**PARTIES**     )  
                  )  
                  )  
**TO**            )  
                  )  
**DISPUTE**    )  
                  )

**BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYES DIVISION – IBT RAIL CONFERENCE**

**VS.**

**CSX TRANSPORTATION, INC.**

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when, beginning on January 2, 2018 and continuing, the Carrier improperly assigned Mr. H. Wright duties not associated with his bid-in job class on the Florence Division (System File F42804818/18-97456 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant H. Wright ‘... shall now be paid three-hundred dollars (\$300) per week for every week he was assigned the duties of Trackman, until he is assigned the proper job class duties of Machine Operator ‘A’ or his bid-in position of Machine Operator ‘A’ is abolished.\*\*\*’ (Employee’s Exhibit ‘A-1’).”

**FINDINGS:**

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

**STATEMENT OF FACTS:**

This dispute involves a Claimant, H. Wright, a Machine Operator, who is instead performing Trackman work, commencing January 2, 2018 and still continuing. This dispute is pursuant to Rules 1, 3, 4, 43 and Attachment A. Specifically, Trackman duties include: constructing, maintaining, repairing, inspecting and dismantling and appurtenances, thereto. In contrast, the primary duties of Machine Operators are to operate machinery. However, the record reflects that the Claimant performed only a modicum of operating work from January 2, 2018 and continuing to present. This claim was filed on February 28, 2018. The Carrier responded on May 1, 2018. However, there was still no resolution.

It is the Carrier's position that there is no violation because the Carrier has the inherent right to move an employee up or down a job classification to perform temporary work. Moreover, the Carrier explains that the Claimant was paid at a rate equal to or above his daily rate for his position at all times cited in the claim. Thus, the Carrier reasons that the Claimant suffered no loss of work or differential in pay. In sum, the Carrier contends that there was no violation of Rule 3, Section 4, or Rule 19 of the 1999 Agreement, as the Organization alleges.

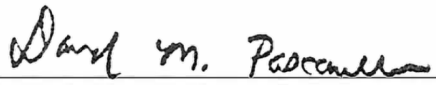
On the other hand, it is the position of the Organization that this is a clear and continuing violation of Rule 1 and Rule 3, Section 3(h). That is, the Organization asserts that one "will" be assigned duties associated with the Machine Operator job class, which was not done. The primary job duties of a Machine Operator were not performed by the Claimant in derogation to Rule 1 and Rule 3, Section 3(W). Notwithstanding the Carrier's position that this was just temporary usage of the Claimant's time, the Organization counters that this is not true. Based on the foregoing, the Organization requests that this claim be sustained.


#### **OPINION OF THE BOARD:**

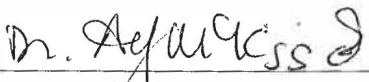
At the request of the parties, the case is dismissed without prejudice.

#### **AWARD:**

This claim is dismissed without prejudice.

  
 David M. Pascarella  
 Employee Member  
 BMWED-IBT

  
 John Nilon, Esq.  
 Carrier Member  
 CSX Transportation Representative

  
 Dr. A. Y. McKissick, Referee

**DATE:** February 9, 2021