

AWARD NO. 456
Case No. 456

Carrier File: 18-92989
BMWE File: F34816218

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 September 29, 2018, the Carrier assigned junior employee D. Ralston to perform overtime (flagging) near Mile Post SE 271.8 on the Raleigh Rocky Mount Seniority District (F34816218/18-92989 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Carroll shall now be compensated for ‘... eight (8) hours of overtime at the Track Foreman-Flagman rate of pay and that all time be credited towards vacation and retirement
***”

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.

At all times relevant herein, Claimant, J. Carroll, held a Trackman/inspector position. On September 29, 2018, while Claimant and Assistant Foreman/Flagman D. Ralston were on rest days, the Carrier assigned Mr. Ralston to provide track protection, or “flagging,” near Milepost SE 271.8 on the Raleigh Rocky Mount seniority district. Mr. Ralston was paid for eight hours, at an

overtime rate, for his work on the flagging job. There is no dispute that Claimant occupied a higher-rated position than Mr. Ralston. It is also undisputed that Mr. Ralston 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. Ralston rather than Claimant. The Organization asserts that the work at issue was an overtime assignment governed by Rule 17, Preference for Overtime Work, giving Claimant a superior claim to the work based on his greater seniority. Rule 17 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 Carrier contends that there was no violation as the flagging assignment was instead 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.

The Carrier states that the fact 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. Rather, the Carrier contends, the assignment was a one day temporary vacancy governed by Rule 3. It requires, the Carrier states, that the work be assigned to the senior available and qualified employee working in the same or lower class. Flagging, the Carrier notes, is Assistant Foreman work, and Claimant, a Trackman/Inspector, was working in a higher rated position than Mr. Ralston. Therefore, Claimant should not have been given preference for this work.

The Organization bears the burden of establishing the asserted violation. It urges that this was clearly overtime work, as Mr. Ralston was paid on an overtime basis, whereas, it stresses, a temporary vacancy is a straight time assignment, performed during normal work hours.

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 rejected, in identical circumstances, the same arguments the Organization urges here, and found that it failed to meet its burden of proving the alleged contract violation. See also Award Nos. 405 and 406 of this Board.

The Board has not been provided any contrary authority, and the cited cases control the result here. We therefore deny the instant claim.

AWARD: Claim denied.

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Jacalyn J. Zimmerman
Neutral Member

A handwritten signature in black ink, appearing to read "Ross Glorioso".

Ross Glorioso
Organization Member

A handwritten signature in blue ink, appearing to read "John Nilon".

John Nilon
Carrier Member

Dated: 8/16/2022