

PUBLIC LAW BOARD NO. 7163

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

vs.

CSX TRANSPORTATION, INC.

**Case No. 471
Award No. 471
Organization No. ATL804419
Carrier No. 19-44633**

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier failed to offer and assign Atlanta/Waycross Seniority District employee C. McClellan to fill a vacancy and perform the duties of an assistant track foreman-flagman providing protection for outside parties within the yard limits commonly known as Howard Yard near Mile Posts SG 575 and SG 576. 5 and between Mile Posts SG 567.9 and 568.4 and instead assigned Chattanooga and Atlanta Seniority District employee J. Holcombe on March 25, 26, 27, 28 and 29 2019 (System File ATL804419/19-44633 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant C. McClellan shall now be compensated for ‘... forty (40.0) hours of straight time, and four (4) hours of overtime and (0) hours of double-time at the proper rate of pay and that all time be credited towards vacation and retirement ***’ (Employees’ Exhibit ‘A-1’).”

JURISDICTION

The Board upon consideration of the entire record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over this dispute; that the parties were given due notice of hearing.

FINDINGS

The Claimant referenced above has established and holds seniority in various classifications in the Carrier's Maintenance of Way Department. At the time in question, he was regularly assigned within the Atlanta Service Lane Work Territory on the Atlanta Waycross Seniority District. The central rules at issue in this claim are the Scope Rule, Rules 1, 3, 4, 11, 16 and 17 of the Agreement between the parties effective June 1, 1999. The Scope provision describes the work engaged in by Maintenance of Way Employees. Rule 1 describes the seniority classes. Rule 3 governs the selection of positions and Rule 4 sets forth how seniority is determined. Rule 11 sets forth the agreement with respect to overtime pay and procedures. Rule 16 provides the procedures when an employee is called to perform services outside of and not continuous with regularly assigned working hours.

At issue is whether the Carrier violated the Agreement when on March 25, 26, 27, 28 and 29, 2019, the Carrier failed to call and assign Atlanta/Waycross Seniority District employee C. McClellan to fill a temporary vacancy and perform the duties of an assistant foreman-flagman providing protection for outside parties within the yard limits commonly known as Howell's Yard near Mile Posts SG 575 and SG 576.5 and between Mile Posts SG 567.9 and SG 568.4, and instead assigned Chattanooga and Atlanta Seniority District employee J. Holcombe.

By letter dated May 9, 2019, the Organization filed a timely claim on behalf of Claimant contesting the work assignment. The Carrier denied the claim relying on an email statement provided by Roadmaster Jeremy Rice (Rice) stating that "Claimant was offered job responsibilities and deferred to work with the section (sic) this claim is not valid." Carrier's Exhibit B at 5. In a subsequent statement, Rice explained that "the work was offered up in job briefing for c4 and the spray truck when work was offered to the group there was no takers so therefore I consider this work to be turned down by 5A12 a Atlanta service lane extra team not a local section...." Carrier's Exhibit B at 6. In response to the Carrier's declination, the Organization provided statements signed by three (3) of Claimant's crew members refuting Rice's statements. In the aggregate, they stated that the members of 5A12 were not offered the flagging assignment performed by Holcombe. Thereafter, the claim was properly handled by the Parties at all stages of the appeal up to and including the Carrier's highest appellate officer. The matter was not resolved and is now before this Board for resolution.

In reaching its decision, the Board has considered the record evidence and arguments of the parties, whether specifically addressed herein or not. As

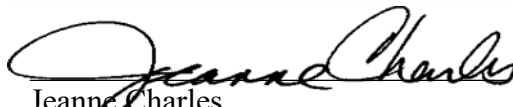
the moving party, it was the Organization's responsibility to meet its burden to prove by a preponderance of evidence that the Carrier committed the alleged violations. After careful review of the record, the Board finds the Organization has met its burden.


The record establishes that the work at issue was performed by J. Holcombe who is less senior than Claimant. While Roadmaster Rice asserts that Claimant turned the job down, the statements by other members of 5A12 claimed the opposite. As noted by the Carrier, a statement provided in Case No. 473 on this Board indicated that Will Royston turned down the foreman role because the foreman role was being assigned non-foreman duties. However, Royston is not the claimant here, and the foreman role is not at issue in this matter.

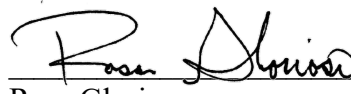
The Carrier contends that, at best, the Organization has established an irreconcilable conflict of material fact and that precedent which this Board must follow dictates that the Organization failed to meet its burden of establishing a prima facie case under such circumstances. However, the Board finds that the Organization provided more than mere assertions. Three (3) other crew members confirmed in writing that no offer of work was made. On balance, the evidence in support of the violation outweighs Roadmaster Rice's uncorroborated statement. Accordingly, the Board will sustain the claim.

AWARD

Claim sustained. The Carrier is directed to comply with this Award on or before thirty (30) days following the Award date below.


Jeanne Charles
Chairman and Neutral Member


John Nilon
Carrier Member


Ross Glorioso
Labor Member

Dated: 1/18/2022