

**PUBLIC LAW BOARD NO. 7163**

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

**vs.**

**CSX TRANSPORTATION, INC.**

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**Case No. 472  
Award No. 472  
Organization No. ATL804819  
Carrier No. 19-36603**

**STATEMENT OF CLAIM**

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when 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 track foreman-flagman providing flagging protection for Track Gang 5A12 near Mile Posts SG 555.0 and SG 556.4 and instead assigned employee M. Stepp on April 1, 2019 (System File ATL804819/19-36603 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant C. McClellan shall now be compensated for ‘... ten (10.0) hours of straight time, and one (1.0) 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 and 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 April 1, 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 Track Gang 5A12 near Mile Posts SG 555.0 and SG 556.4 and instead assigned employee M. Stepp, who was assigned to another seniority district.

By letter dated May 24, 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 dated July 4, 2019, provided by Roadmaster Jeremy Rice (Rice) stating that “This work did take place and the hours are accurate. Mr. McClellan was offered these duties and declined to flag....” Carrier 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 two (2) 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 Stepp. 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 M. Stepp 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. Two (2) 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