

PUBLIC LAW BOARD NO. 7163

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

vs.

CSX TRANSPORTATION, INC.

**Case No. 474
Award No. 474
Organization No. ATL804119
Carrier No. 19-02081**

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 W. Royston to fill a temporary vacancy and perform the duties of an assistant track foreman-flagman providing flagging protection for an outside party and on-track workers near Atlanta, Georgia and instead assigned Chattanooga and Atlanta Seniority District employee J. Holcombe on March 7, 8, 11, 12, 13, 14 and 15, 2019 (System File ATL804119/19-02081 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant W. Royston shall now be compensated for ‘... fifty-six (56) hours of straight time, twenty-eight (28) 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 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. Finally, Rule 17 governs the preference for overtime work assignments.

At issue is whether the Carrier violated the Agreement when beginning on March 7, 8, 11, 12, 13, 14 and 15, 2019, the Carrier failed to call and assign Atlanta/Waycross Seniority District employee W. Royston to fill a temporary vacancy and perform the duties of an assistant foreman-flagman providing protection for an outside party and other on-track workers near the yard limits commonly known as Howard Yard near Mile Posts SG 575 and SG 576.5 and at the tracks near Mile Posts SG 561.8 and SG 563.3 and Mile Posts SG 570.6 and SG 574.0 and instead assigned Chattanooga and Atlanta Seniority District employee J. Holcombe.


By letter dated May 6, 2019, the Organization filed a timely claim on behalf of the Claimant contesting the work assignment. The Carrier denied the claim relying on an email statement dated July 28, 2019, provided by Roadmaster Jeremy Rice (Rice) stating that “This work did take place and the hours are incorrect. The claimant worked the same straight time hours as Mr. Holcombe, and the work was offered to the [Claimant] but was denied because he did not want the foreman responsibilities.” Carrier Exhibit B at 5. In a subsequent statement dated September 20, 2019, Rice explained that “...Mr. Holcombe did flag for the C4 and the spray truck the work was offered up in job briefing for (sic) 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 four (4) of Claimant’s crew members refuting Rice’s statements, in large part. In the aggregate, they stated that the members of 5A12 were not offered the flagging assignment performed by Holcombe. However, two (2) of the statements indicated that Claimant objected to performing foreman duties while the foreman was being assigned non-foreman duties. 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 not met its burden.

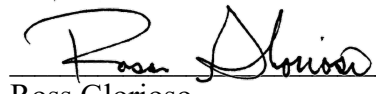
The record establishes that the work at issue was performed by J. Holcombe who is less senior than Claimant. Roadmaster Rice asserts that Claimant turned the job down. The statements by other members of 5A12 suggest that Claimant did object to the assignment. Rice could have reasonably interpreted Claimant's objection as a declination. Therefore, the Board finds that the Organization failed to prove that the violation occurred. Accordingly, the Board will deny the claim.

AWARD

Claim denied.


Jeanne Charles
Chairman and Neutral Member


John Nilon
Carrier Member


Ross Glorioso
Labor Member

Dated: 1/18/2022