

AWARD NO. 520
Case No. 520

Organization File No. LOS709519
Carrier File No. 19-05560

PUBLIC LAW BOARD NO. 7163

PARTIES) BROTHEROOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,
TO) INTERNATIONAL BROTHEROOD OF TEAMSTERS
)
)
DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. The Agreement was violated when, beginning on November 20, 2019 and continuing through and including November 26, 2019, the Carrier assigned junior employee N. Foreman to fill a temporary assistant foreman - flagman vacancy and perform flagging work for outside forces installing a new culvert pipe at Mile Post BE5.8 in Cincinnati, Ohio on the Louisville Division instead of assistant foreman - flagman Mr. B. Stepp (System File LOS 709519/19-05560 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant B. Stepp shall now be compensated for "... ninety eight (98) hours overtime, at the respective overtime rate of pay."

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.

This claim has been presented on the basis that a temporary vacancy for an assistant foreman - flagman was filled by an employee with less seniority than Claimant during the dates of claim. The Organization asserts that Claimant was qualified and available to perform this work.

The relevant Agreement provision in this case is Rule 3 - Selection of Positions, reading, in pertinent part, as follows:

Section 1. Assignment to position

In the assignment of employees to positions under this Agreement, seniority shall govern. The word "seniority" as used in this Rule means, first, seniority in the class in which the assignment is to be made, and thereafter, in the lower classes, respectively, in the same group in the order in which they appear on the seniority district roster. . . .

Section 4. Filling temporary vacancies

(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.

* * *

(f) Vacancies which are not advertised may be filled in like manner.

In Award No. 54 of this Board, the undersigned Neutral Member held:

. . . The crux of the dispute, therefore, is whether the Carrier must offer work to employees in seniority order, or whether the Carrier may use the senior employee who requests the work.

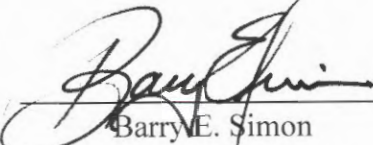
Although the Organization cites Rule 17 - Preference for Overtime Work, which requires the Carrier to offer work to employees in seniority order, we do not find this provision to be applicable. While there was an overtime component to the assignment, it would properly be worked by the employee holding the assignment. The question of who that employee is must be resolved by Section 4 of Rule 3, which governs filling temporary vacancies.


The provision is not specific as to whether the work must be offered to the senior employee or given to the senior employee who requests it. We note, however, that the parties specifically provided for offering the work in Rule 17, but did not in Section 4 of Rule 3. Rather, the provision merely states that "the senior qualified available employees will be given preference." In the case of furloughed employees, the provision goes on to require the Carrier to offer the senior employees the opportunity to return to work. We find the absence of the requirement to offer the work to active employees to be significant. To

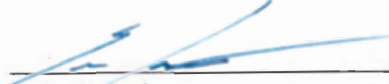
place that requirement into the rule, where the parties could have done so if that was their intent, would effectively amend the Agreement. This Board does not have the power to do so.

The record in this case establishes that Claimant, at the time of the temporary vacancy, was working on a different territory. He has stated he discussed the vacancy with the Roadmaster, but the Roadmaster denies Grievant had requested the opportunity to fill it. Discussing the vacancy is not the same as making a request. As this is a contract case, the Organization bears the burden of proof. Consistent with our finding in Award No. 54, we must find that the Organization has not proven that the use of the junior employee in this case was in violation of the Agreement.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Ross Glorioso
Employee Member


Eric Caruth
Carrier Member

Dated: 9/29/22
Arlington Heights, Illinois