

AWARD NO. 535
Case No. 535

Organization File No. 2020-15
Carrier File No. 20-79824

PUBLIC LAW BOARD NO. 7163

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION,
) INTERNATIONAL BROTHERHOOD OF TEAMSTERS
TO)
)
DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. The Agreement was violated when, between June 8, 2020 and June 11, 2020, the Carrier assigned Track Inspector C. Bryant to fill a vacant temporary assistant foreman-flagman position and provide flagging protection for a switch tie team working in the vicinity of Kingsport, Tennessee on the Clinchfield Seniority District instead of assigning Assistant Foreman-Flagman J. Burleson thereto (System File 2020-15/20-79824 CSX).
2. As a consequence of the violation referred to in Part (1) above, Claimant J. Burleson shall now be compensated for thirty-two (32) hours straight time twelve (12) hours overtime at the respective assistant foreman-flagman rates 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.

The facts in this case are undisputed. Between June 8 and 11, 2020 the Carrier had a temporary vacancy for an Assistant Foreman to perform flagging duties in connection with a switch tie team working in the vicinity of Kingsport, Tennessee. Track Inspector C. Bryant was permitted

to step down from his higher paying position to the Assistant Foreman position. At the time, Claimant was regularly assigned at an Assistant Foreman-Flagman elsewhere on the Clinchfield Seniority District.

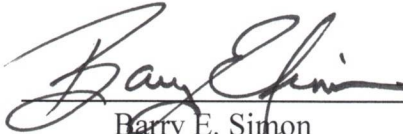
The Organization cites the parties' May 9, 2007 Memorandum of Agreement regarding flagging assignments. It reads, in pertinent part, as follows:

When flagging work is required in connection with Track Department work or other work that hold the potential to undermine the integrity of the roadbed or track structure, an Assistant Foreman - Flagman from the Track Department shall be assigned in accordance with Rule 3, Section 3 or 4, as applicable.


In connection with this provision, the parties additionally agreed that an employee may not step down in class to take a temporary flagging position. Because of this agreement specific to this situation, we must find that Organization has met its burden of proof in showing the Carrier violated the Agreement when it allowed Track Inspector Bryant to step down to take the flagging position. Claimant, therefore, had a superior right to the assignment.

The record reflects Claimant was working at the time of the violation herein, and therefore had earnings he would not have had if he had been assigned to this vacancy. As a remedy, therefore, Claimant should receive the difference in compensation between that earned by Track Inspector Bryant and what Claimant was paid during the period of the claim.

AWARD: Claim sustained in accordance with the above Findings. Carrier is directed to comply with this Award within 45 days.


Barry E. Simon
Chairman and Neutral Member


Ross Glorioso
Employee Member


John Ingoldsby
Carrier Member

Dated: March 18, 2024
Arlington Heights, Illinois