

PUBLIC LAW BOARD NO. 7163

CASE NO. 592

AWARD NO. 592

Brotherhood of Maintenance of Way Employees Division)	
of the International Brotherhood of Teamsters)	
)	
and)	Arbitration Decision
)	and Award
CSX Transportation, Inc.)	
)	
Carrier File: 20-69106)	
BMWE File: HTP806020)	
)	

I. STATEMENT OF THE CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when, beginning on July 10, 2020, the Carrier failed to properly advertise a vacant position after it removed Assistant Track Foreman H. Wright from service pending a disciplinary hearing (System File HTP806020/20-69106 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimants T. Kuhns, M. Cooper, R. Gardner, S. Newton, C. Barber, G. Bolger, R. Bright, S. Cooper, C. Dawkins, A. Redfearn, B. Sachs, H. Wright, D. Greene, C. Tyler and H. Shelton shall now each be given the opportunity to exercise seniority under Rule 4 Section 2.A.1.”

II. RELEVANT CONTRACT ARTICLE

RULE 3 - SELECTION OF POSITIONS, Sections 3(a)-(e), 4

RULE 4 - SENIORITY, Sections 1(a), 2(a)1

ATTACHMENT A - Track Panel Facility MOU, February 29, 2012 Agreement

Hamlet Track Panel Facility, Track Panel Facility
Seniority

A. Positions in the Track Panel Facility shall be subject to the terms and conditions of the June 1, 1999 Agreement except as set forth below:

1. Positions in the Track Panel Facility shall be advertised on a system-wide basis. The advertisements shall list the position, title, rate of pay, headquarters, assigned hours, rest days and meal period. The advertisement bulletin shall also advise that the successful applicants shall establish seniority on a separate Track Panel Facility seniority roster and that they:
 - a. Shall not be permitted to bid to positions outside of that roster once they are assigned to a position in the Track Panel Facility.
 - b. Shall not be subject to displacement by employees who do not hold seniority on the Track Panel Facility roster.
 - c. Shall retain all seniority they hold on other seniority rosters but shall not be permitted to exercise that seniority unless their position in the Track Panel Facility is abolished, at which time they will be afforded a normal exercise of seniority under the terms of the June 1, 1999 Agreement, as amended.

III. FACTS

The Hamlet Track Panel Facility (“Hamlet”) employees are subject to a separate memorandum of agreement (“Attachment A”) between the parties that limits transfers into and out of the facility unless a position in Hamlet is abolished. Attachment A essentially created a “closed shop” and promotional opportunities within Hamlet are limited to those already on the Hamlet roster. At the time of the dispute, each Claimant at Hamlet had established Assistant Track Foreman seniority.

On July 10, 2020, the Carrier suspended Assistant Track Foreman H. W. from service until August 28, 2020 (49 days). The Carrier knew he would be out of service for more than 20 days. There is no dispute that the Carrier failed to advertise the temporarily vacant Assistant Track Foreman position in violation of Rule 3(a) of the Agreement. However, the Carrier upgraded D.G, who held a Basic Track position and was the senior qualified employee at Hamlet, to the Assistant Track Foreman position until H.W. returned from his disciplinary suspension.

When the Organization realized that the position was not posted, it emailed management to report the problem. However, the email was sent to an invalid email address and was not seen. Before it knew that its email was not received, the Organization filed this claim. During the grievance process, the Carrier acknowledged the failure to post the position, but asserted that, despite the lack of posting, D.W. was the most senior Basic Track employee who had not already

established Assistant Track Foreman seniority and was therefore the only person on the Hamlet Track Roster eligible for the temporary position.

IV. POSITIONS OF THE PARTIES

Organization's Position

The Organization contends that Carrier's violation of Article 3 by failing to post the Assistant Trackman Foreman position had a cascading effect by denying the Claimants the opportunity to fill other positions outside the Hamlet Facility. Therefore, it asserts that the appropriate remedy is to allow the Claimants to have an opportunity for promotional opportunities within the system.

Carrier's Position

The Carrier contends that the claim should be denied because there was no harm done by the failure to post the temporary vacancy while H.W. was out on suspension. It states that it remediated the posting violation by upgrading D.G. to the Assistant Foreman position during the period of H.W.'s suspension.

The Carrier also notes that none of the Claimants' positions in Hamlet were abolished, which is the only circumstance in which an employee in that facility can displace another employee throughout the system. It explained that any displacement right would be restricted to allowing the employees to exercise their seniority only within the facility. The Carrier further contends that under the language in Attachment A, no one from outside Hamlet is allowed to displace anyone else within Hamlet regardless of seniority. It argues therefore that no further remedy is required.

V. DECISION

The Board, upon the whole record and on the evidence, finds that the parties herein are

Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.


The Board finds that the Carrier violated the Agreement when it failed to post the Assistant Track Foreman vacancy in Hamlet during the relevant time frame.


Concerning the remedy requested by the Organization to allow the Claimants to bid on system-wide positions, Attachment A.1(a) is clear that no Hamlet employee may bid for positions outside of Hamlet unless their position has been abolished. Therefore, allowing the Claimants to do so would not be a proper remedy for this Board to award.

Despite the failure of the Carrier to post the position, the violation did not cause any harm to the Claimants. Therefore, a cease and desist order is the only appropriate remedy in this case.

VI. AWARD

1. The claim is SUSTAINED.
2. The Carrier is to post vacancies in Hamlet going forward.
3. The Carrier is ordered to make the Award effective on or before 45 days following the date the Award is transmitted to the parties.


Casey Summers
Organization Member


John Ingoldsby
Carrier Member



Sheila Mayberry, Chair and Neutral Member
December 13, 2024