

PUBLIC LAW BOARD NO. 7163

CASE NO. 603
AWARD NO. 603

Brotherhood of Maintenance of Way Employes
Division - IBT Rail Conference

and

CSX Transportation, Inc.

Claimant: A. Bastedo

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when, on October 5, 6, 7, 8, 9 and 10, 2020, the Carrier assigned employee D. Hamilton to work a temporary assistant flagging vacancy on the Aberdeen Subdivision - Mile Posts S157.7 to S160.0 on the Raleigh-Rocky Mount Seniority District instead of assigning Mr. A. Bastedo thereto (System File FLO136720/20-28087 CSX).
 2. As a consequence of the violation referred to in Part 1 above, Claimant A. Bastedo shall now be compensated for ‘... thirty (32) hours straight time and twenty one (21) hours overtime at the Assistant Foreman rate. ***’ (Employees’ Exhibit ‘A-1’).”
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FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within meaning of the Railway Labor Act, as amended, this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and the parties were given due notice of the hearing held.

Claimant, A. Bastedo, established and holds seniority in the Carrier's Maintenance of Way Department. At the time of this dispute, he was regularly assigned to Team 5XT0 on the Raleigh/Rocky Mount seniority of the Florence Division.

On October 5, 6, 7, 8, 9, and 10, 2020, the Carrier assigned D. Hamilton to fill a temporary assistant foreman-flagman vacancy and perform flagging work at Mile Posts S157.7 to S160.0 on the Raleigh/Rocky Mount Seniority District. During these dates, Hamilton was regularly assigned to Team 5FM1 on the Florence/Savannah Seniority District. Claimant was working in the Raleigh/Rocky Mount Seniority District as a backhoe operator, which is the same classification as assistant foreman – flagman, held seniority as an assistant foreman-flagman, and was qualified to perform the work claimed. Therefore, the Organization maintains that Claimant had an Agreement right to the temporary flagging assignment here. The Organization further maintains that Claimant requested the assignment and would have performed the work had the Carrier afforded him the opportunity.

The record shows both employees were qualified to do the work in question. The Carrier asserts that this was Claimant's regular work, not a temporary vacancy as the Organization asserts. However, the work took place in the Aberdeen Subdivision on the Raleigh/Rocky Mount Seniority District. Accordingly, Claimant was entitled to the work.

As a remedy, the Organization claims thirty (32) (sic) hours straight time and twenty one (21) hours overtime at the Assistant Foreman rate for Claimant. Claimant's remedy is the difference between the straight time and overtime earned by D. Hamilton and the straight time and overtime Claimant worked on claimed dates. See PLB 7163 Award No. 50 (Clauss, 2011).

AWARD:


Claim sustained in accordance with the above Findings.



Rachel Goedken
Neutral Referee
Dated: Feb 11, 2025



Casey Summers
Employee Member



John Ingoldsby
Carrier Member

**CARRIER MEMBER'S
DISSENT
To
PLB 7163 Award No. 603**

Brotherhood of Maintenance of Way Employees Division

&

CSX Transportation, Inc.

A review of the Award issued by the Board indicates, without doubt, the Board erred in its decision when it asserted, incorrectly, that there was a violation of the Agreement by the Carrier when it did not assign Claimant to assistant flagging duties on the Aberdeen Subdivision on October 5, 6, 7, 8, 9 and 10, 2020, as no such temporary vacancy existed.

The facts of the case are substantially undisputed. There was no language in the Agreement or Memoranda of Agreement which would establish a basis for the claim asserted by Claimant. The Organization asserts a new flagging vacancy existed, but their assertion is false. The Carrier notes the work in question took place on the Florence/Savannah Seniority District and a Florence/Savannah Seniority District Assistant Foreman Flagman who'd previously been awarded the flagging position pursuant to Rule 3, Section 3 of the BMW Agreement was assigned to perform the flagging work.

Although the Carrier asserted there was no vacancy to fill and demonstrated that with a supporting statement, payroll records, and work history provided during the on-property handling, the Board held Claimant should have been assigned the position as Claimant held seniority on the Raleigh / Rocky Mount Seniority District where the work was believed to have been performed. The Board reached this decision even though Claimant was assigned to an SPT, meaning he could not fill the vacancy even if the Carrier intended to.

The Board has erred when it has implied, without evidence of language or practice that Claimant had a seniority right to the work. A review of the Board decision appears to demonstrate a misunderstanding of the existence of a vacancy and creates an unsupportable basis for the result produced here.

With incorporation by reference to the Carrier submission in this case, it must be noted Claimant suffered no loss of work opportunities and was properly compensated for all service performed during the claim period, in accordance with the terms of the Agreement. A plain language reading of the Agreement in relation to past-practice would produce a declination of the instant claim, which would be consistent with previous practice. The rationale by the Board for the result produced here is not supported by the information in the record.

To produce such a contrary and unfounded Award, the Board has created a negative reliance on precedent and produced an inconsistent result. Both the Carrier and the Organization rely on consistent awards in the industry and the Carrier in this circumstance relied on Board decisions to make managerial decisions. To produce such a contrary conclusion creates the expectation that further disputes will ensue. The Carrier will implement the decision of this Board even though it is in contradiction of prior decisions and past practice on this issue.

The Board is limited to determine issues authorized by the RLA, including the requirement that the Organization establish a violation of the Agreement actually occurred, which the Carrier maintains the

Organization has failed to do. As the Board has clearly erred in its analysis and conclusion, the Carrier dissents and asserts this Award should carry no weight in future disputes of like kind.

A handwritten signature in black ink, appearing to read "John K. Ingoldsby". The signature is fluid and cursive, with the first name "John" being the most prominent.

John K. Ingoldsby
Carrier Member

February 11, 2025