

PUBLIC LAW BOARD NO. 7163

CASE NO. 604  
AWARD NO. 604

Brotherhood of Maintenance of Way Employees  
Division - IBT Rail Conference

and

CSX Transportation, Inc.

Claimant: J. Burleson

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STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when, between the dates of May 3, 2021 and May 7, 2021, the Carrier assigned junior employee J. Harris to fill a vacant Bridge and Building (B&B) assistant foreman flagman position and perform flagging services between Mile Post Z 269.1 and Mile Post Z 271.1 on the Blue Ridge Subdivision and failed to assign Mr. J. Burleson thereto (System File 2021-07/21-04450 CSX).
  2. As a consequence of the violation referred to in Part 1 above, Claimant J. Burleson shall now ‘... be compensated for (40) hours straight time and (27.60) hours overtime at the respective B&B Assistant Foreman Flagman straight time and overtime rates of pay. \*\*\*’ (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.

Between the dates of May 3, 2021, and May 7, 2021, the Carrier assigned junior employee J. Harris to fill a temporary Bridge and Building (B&B) assistant foreman - flagman vacancy and

perform flagging work between Mile Post Z 269.1 and Mile Post Z 271.1 on the Blue Ridge Subdivision. The Organization maintains that the Claimant, who holds seniority in the proper class of assistant foreman - flagman, had an Agreement right to the temporary flagging assignment involved here, was qualified and able to perform the work and would have performed the work had the Carrier afforded him the opportunity to do so. The Organization claims that the Carrier failed to give any preference for the vacancy to the Claimant whatsoever, despite being the senior employee in the required job class.

The Carrier admits that the junior employee filled a temporary vacancy on the dates in question. However, the Carrier maintains that Claimant never requested the opportunity to fill the vacancy nor did he attempt to exercise his seniority over the employee who performed the work.

The parties have reached an agreement regarding temporary vacancies and flagging duties. Memorandum of Understanding #1, Section 8 provides:

**Section 8 - Flagging Work**

A. The classification of Assistant Foreman - Flagman with a rate of pay equal to that of a Class 'A' Machine Operator shall be established within the Track and B&B Departments under the June 1, 1999 Agreement. The Assistant Foreman-Flagman (Track) seniority standing shall be based on Assistant Foreman seniority in the Track Department. The Assistant Foreman-Flagman (B&B) seniority standing shall be based on Assistant Foreman seniority in the B&B Department. Department.

1. When flagging work is required in connection with Track Department work or other work that holds 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.

Rule 3, Section 4 provides in relevant part, “. . . 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.” This Board has

found that under similar circumstances, this language does not require the Carrier to assign the work to employees who have not requested it. See PLB 7163 Award No. 54 (Simon, 2010) and PLB 7164 Award No. 493 (Simon, 2022). In the instant case, the facts do not demonstrate that Claimant requested the work.

AWARD:

Claim is denied.



Rachel Goedken  
Neutral Referee  
Dated: Feb 11, 2025



Casey Summers  
Employee Member



John Ingoldsby  
Carrier Member