

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7357
AWARD NO. 16, (Case No. 16)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION – IBT RAIL CONFERENCE**

vs

**CP RAIL SYSTEM/DELAWARE AND HUDSON
RAILWAY COMPANY, INC.**

**William R. Miller, Chairman and Neutral Member
Kevin D. Evanski, Employee Member
Anthony G. Stillittano, Carrier Member**

Hearing Date: July 15, 2015

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the agreement when it failed to assign Claimant Finch to the Trackman position on the Binghamton Section Gang, in Binghamton, New York on April 19, 20, 23, 30 and May 3 and 7, 2010, (Carrier's File 8-00761).**
- 2. As a consequence of the violation referred to in Part 1 above, we request that Claimant S. Finch shall now be compensated for a total of forty-eight hours at the applicable straight time rate of pay."**

FINDINGS:

Public Law Board No. 7357, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

This claim concerns the Carrier's decision not to fill a Binghamton Section Gang Trackman position on April 19, 20, 23 and 30, May 3 and 7, 2010. On these dates the Carrier assigned the regularly assigned Binghamton Section Gang Trackman to operate a Grapple Truck and did not backfill the Section Gang Trackman position.

It is the position of the Organization that the Carrier violated the Agreement when it instructed a Trackman assigned to the Binghamton Section Gang's to operate a Grapple Truck without backfilling that position with the Claimant who was qualified and available to perform

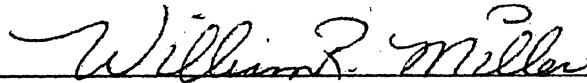
those duties. It concluded the Carrier violated the Agreement and it requested that the claim be sustained as presented.

It is the Carrier's position that on claimed dates the Binghamton Section Gang Trackman was temporarily assigned to operate the Grapple Truck on an as needed basis in accordance with Rule 17.1. Moreover, the Carrier contends that it was not required to fill the relatively short Trackman vacancy created while the regularly assigned employee was temporarily assigned to operate the Grapple Truck. It closed by asking that the claim remain denied.

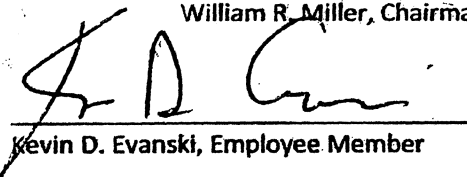
After a thorough review of this case the Board has determined that the Organization has not met its burden to establish that the Carrier violated the Agreement by not backfilling the Binghamton Section Gang Trackman position on April 19, 20, 23, 30 and May 3 and 7, 2010, when the regularly assigned Binghamton Section Gang Trackman position was assigned to operate a Grapple Truck. The Board notes that some of the issues referred to by the parties in this case are properly before the Board in Award No. 17, (Case No. 17) of this same Board. However, in connection with the specific issue presented in the instant case the Board finds and holds that the claim must be denied because the Organization has not established an Agreement violation.

AWARD

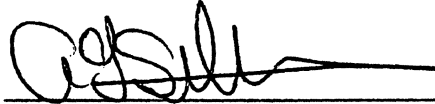
Claim denied.



William R. Miller, Chairman & Neutral Member



Kevin D. Evanski, Employee Member



Anthony G. Stillitano, Carrier Member

Award Date: 8-3-15