

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD No. 7163**

Brotherhood of Maintenance of Way)	
Employees Division, IBT Rail Conference)	
)	
vs.)	Case No. 116
)	Award No. 116
)	
CSX Transportation, Inc.)	

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

1. The Agreement was violated when the Carrier failed to properly cancel an advertised bridge mechanic position on Gang 6KP3 on the Great Lakes Seniority District of the Great Lakes Division on June 2, 2010 (System File H40133610/2010-070638).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Norfleet shall receive '... eight (8) hour (sic) straight time, two (2) hour (sic) overtime plus expenses made each date including weekends beginning June 22, 2009 (sic) and continuing until the violation stops, at his respective rate (Mechanic 23.67). ***' (Employees' Exhibit 'A-1')."

[Organization Submission at 1]

Findings:

Public Law Board No. 7163, upon the whole record and all the evidence, finds that (1) the parties to this dispute are Carrier and Employees within the meaning of the Railway Labor Act as amended, (2) the Board has jurisdiction over this dispute, and (3) the parties to the dispute were accorded due notice of the hearing and participated in this proceeding.

This claim was timely presented by the Organization and responded to by the Carrier during on-property processing including conference. Having addressed this claim in the customary and usual manner, the record established by the parties is now before the Board for adjudication.

The gravamen of the claim is the Organization's assertion that the Carrier violated Rule 1 - Seniority Classes, Rule 3 - Selection of Positions and Rule 11 - Overtime in the posting, advertising and filling of a mechanic position. The particulars are as follow.

On May 18, 2010 the Carrier posted an advertisement for a mechanic position on Gang 6KP3 in the Great Lakes Seniority District of the Great Lakes Division. Claimant applied for the posted position and, on May 26, 2010, the Carrier notified Claimant that it had been awarded to him.

Claimant remained in his welder position through June 2, 2010 and reported for duty for the mechanic position on June 3, 2010; however, the Supervisor informed Claimant that the position had been mistakenly awarded to him and he was to return to his welder position. In this regard,

the Carrier issued an award correction award showing the senior qualified employee awarded the mechanic position.

The Organization asserts that the Carrier breached Rule 3 at Sections 3(a), 3(e) and 4(a) when it did not cancel the advertisement within five (5) calendar days and when it did not allow Claimant to perform the mechanic's duties when he reported on June 3, 2010 or thereafter since the mechanic position was vacant pending the assignment of a senior qualified employee.

Rule 3, Section 3(a) states that a position and vacancy "will be advertised within thirty (30) days previous to or within twenty (20) days following the dates they occur[.]" The Carrier posted the position from May 18, 2010 through May 24, 2010 and awarded it on May 26, 2010. All of these dates fit within the boundaries of Section 3(a). The position was properly posted and advertised.

The Carrier acknowledges that it mistakenly awarded the mechanic position to Claimant; its issuance of an award correction resulted in the senior qualified employee filling the mechanic position. This complies with Rule 3, Section 1 where seniority governs "in the assignment of employees to positions under this Agreement." The Organization does not assert that Claimant was the senior qualified employee or point to any rule that proscribes the Carrier from correcting an erroneous assignment.

BMW asserts the Carrier had to cancel the posted mechanic position by May 31, 2010 since Claimant was awarded it on May 26, 2010. Rule 3, Section 3(e) states that the Carrier "may cancel" a posted advertisement "within five (5) days from the date" of its posting. The Carrier did not cancel the posting so it did not violate the 5-day window. Additionally BMW incorrectly starts the 5-day period from May 26, 2010 which is the date Claimant was erroneously awarded the position. The correct date to commence the 5-day window is May 18, 2010, which is the first day the mechanic position was posted.

Finally, the Organization asserts that under Rule 3, Section 4(a) Claimant could have performed the mechanic's duties on a temporary basis until the position was filled through the subsequent posting following the senior qualified employee's departure from that assignment. Section 4(a) provides that a vacant position "may be filled temporarily pending assignment" which clearly accords discretion to the Carrier. The Carrier's decision not to temporarily fill the mechanic position does not violate Section 4(a) and does not cause a loss of work opportunity for the Claimant.

The Board concludes that the Organization did not meet its burden of proof for the alleged violations of Rules 1, 3 and 11 because the Carrier complied with those rules. Since there are no rules violations, this claim is denied.

Award:

Claim denied.



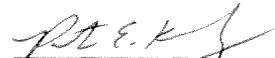
Patrick J. Halter

Neutral Member

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Carrier Member
Robert A. Paszta



Organization Member
Peter E. Kennedy

Dated this 23 day of Oct, 20 12