

AWARD NO. 23

Case No. 23

Organization File No. 2005-1-GJY-APPEAL

Carrier File No. 12 (05-0609)

**PUBLIC LAW BOARD NO. 7163**

PARTIES     ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
              )  
TO            )  
              )  
DISPUTE     ) CSX TRANSPORTATION COMPANY

STATEMENT OF CLAIM:

I, G. J. Yow ID #171282, feel that Mr. T. S. McCullough ID #168480 made a Illegal Roll on 01-14-05 when he was permitted by the carrier to displace me from my position as a class (A) machine operator on force 6J46 (Brandt truck #79994) according to the C B Agreement effective June 1 1999. Mr. McCullough told me that he did not know how to run or operate the Brandt truck. Therefore causing this displacement of me on my position on force 6J46 not within the provision of the C B Agreement between CSX Transportation and Brotherhood of Maintenance of Way Employees. This is a continuous claim until corrected.

Rule 3&4 section of positions 1&2.

Roll Date 1-14-05

Force 6J46

FINDINGS:

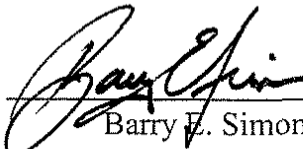
The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved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

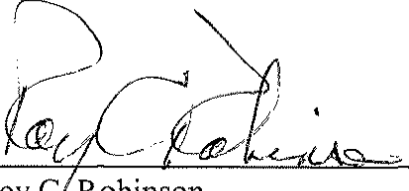
The facts in this case are not in dispute. Until January 14, 2005, Claimant was regularly assigned as the Brandt Truck operator on Force 5J46. On that date, Claimant was displaced by


senior "A" Machine Operator T. S. McCullough. The Carrier acknowledges that McCullough was not qualified for this position and had to be trained by Claimant before Claimant was released. Rule 4, Section 2(a) provides that "Except as otherwise provided, an employee may exercise seniority to a position for which he is qualified." The Board concludes that provision limits an employee's exercise of seniority to only positions for which he is already qualified. Inasmuch as McCullough was not qualified for the Brandt Truck operator position at the time he exercised his seniority, Claimant was not displaced in accordance with the Agreement.

Once the Carrier determined Claimant was improperly displaced, it offered to return him to the position and compensate him for the difference between what he had earned and the earnings of the Brandt Truck operator position. Claimant declined this offer. It is the Board's conclusion that the Carrier's offer was the proper remedy for the violation of the Agreement and Claimant had a duty to mitigate his damages. Accordingly, we will direct that Carrier pay Claimant the difference in earnings up until the time it offered to return Claimant to the job, which the parties agree is \$262.00.

AWARD: Claim sustained in accordance with the above Findings. Carrier is directed to comply with this Award within 45 days

  
Barry E. Simon  
Chairman and Neutral Member

  
Roy C. Robinson  
Employee Member

  
James T. Klimtzak  
Carrier Member

Dated: December 30, 2008  
Arlington Heights, Illinois