

Public Law Board 7163

Award No. 45

Parties to the Dispute:

Brotherhood of Maintenance of Way Employees Division

IBT Rail Conference

and

CSX Transportation, Inc.

(B. Siebert – Claimant)

Statement of Claim: “Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier failed and refused to advertise and assign a position (Maintenance of Way employee providing protection for outside party) working in Toledo Docks, Lakefront Yard, Toledo Terminal and when it assigned junior employee S. Simmons to work said position beginning October 3 and continuing through December 19, 2006 instead of Mr. B. Seibert [System File H44510606/12(07-0541) CSX].
2. As a consequence of the violation referred to in Part (1) above, Claimant B. Seibert shall now be compensated at his respective overtime rate of pay for all overtime hours worked by junior employee S. Simmons beginning October 3 and continuing through December 19, 2006.”

Findings:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934. Public Law Board 7163 has jurisdiction over the parties and the dispute involved herein.

The Organization presented a claim that alleges a violation of the Claimant's seniority rights because the carrier permitted a junior employee to perform work that should have been assigned to Claimant. According to the Organization, a junior employee was assigned to perform flagging and protection for an outside contractor, despite Claimant requesting the work. The assignment, a foreman position, was never advertised but worked for 71 days. Because the Carrier chose to use a BMW-represented employee to perform the work, it was bound by the

respective Agreement. Under that Agreement, the assignment should have been advertised and Claimant could have worked the assignment.

The Carrier replies that there was no need to advertise this position because the flagging duties were part of the regular assignment of the employee. Prior to the August 23, 2007, Memorandum of Understanding, flagging was not exclusive to the craft. The Foreman who performed these duties was part of Basic Force 5P39 and the work of flagging was part of his assignment as Foreman. There was no vacancy and a position was not created. Therefore, Claimant was not entitled to bid for the position.


The Carrier further claims that flagging can be performed by any qualified Class or Craft and is not a separate position covered by the June 1, 1999 BMWF Collective Bargaining Agreement. Rather, flagging is a duty that can be performed by craft and non-craft personnel. The Organization responds that, once the decision to use BMWF-represented employees, that Agreement's requirements on seniority be followed.

During the processing of the instant matter, the parties entered into a Memorandum of Agreement regarding the Scope Rule of the Collective Bargaining Agreement. Included in the Memorandum is Section 8, entitled Flagging Work, that established the classification of Assistant Foreman – Flagman and discusses the work to be done by this new classification and how the position should be assigned.

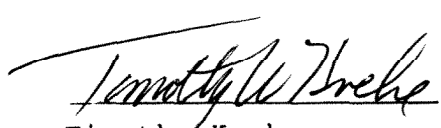
After a review of the record, the Board finds that the Organization has not established a violation of the Collective Bargaining Agreement. The Carrier asserts that the flagging and protection work was part of the regular assignment for the foreman of 5P39. This is not rebutted by the Organization. Accordingly, after a review of the evidence submitted and the arguments before this Board by the parties, this Board finds that the Agreement was not violated.

Award:

Claim is denied.



Brian Clauss
Chairman and Neutral Member


Timothy Kreke
BMWED

Organization Member


Matthew Borzilleri
CSX Transportation, Inc.

Carrier Member

Dated this 17th day of February 2011