

AWARD NO. 52  
Case No. 52

Organization File No. B14218507  
Carrier File No. 12(07-1145)/2007-001947

**PUBLIC LAW BOARD NO. 7163**

PARTIES     ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,  
              ) INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
TO            )  
              )  
DISPUTE     ) CSX TRANSPORTATION, INC.

**STATEMENT OF CLAIM:**

1.     The Agreement was violated when the Carrier failed to call and assign Mr. J. Page to fill a foreman/flagging vacancy working between Mile Posts ANB 587.9 and ANB 681.5 Waycross, Georgia beginning June 9 and continuing through June 22, 2007 and instead assigned Track Inspector G. Reaves, Jr. to fill said vacancy.
2.     As a consequence of the violation referred to in Part (1) above, Claimant J. Page shall now be compensated for fifty-six (56) hours straight time at the foreman rate of twenty dollars and fifty-three cents (\$20.53) per hour and sixty-eight and one-half (68 ½) hours overtime at thirty dollars and eighty cents (\$30.80) per hour for a total of three thousand two hundred fifty-nine dollars and forty-eight cents (\$3,259.48), account the Carrier denied Mr. Page the opportunity to work a temporary foreman/flagging position.

**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 Organization asserts that T. Summer, the regularly assigned Foreman on Gang 5JA4 was absent on various dates between June 9 and June 22, 2007. It says the Carrier assigned Track

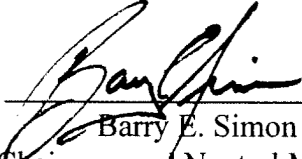
Inspector G. Reaves, Jr. to fill the position when Summer was absent. According to the Organization, the Carrier should have utilized Claimant, who holds seniority as a Foreman but was working as a Machine Operator on Gang 6AB6 at the time. The Organization contends Claimant had requested to perform the work on Gang 5JA4.


The Carrier first denies that Claimant had requested to work the Foreman job on Gang 5JA4. The Organization has not furnished any support for its assertion that Claimant requested the assignment. Instead, it argues it was the responsibility of the Carrier to offer the work to Claimant and he did not have to make a request.

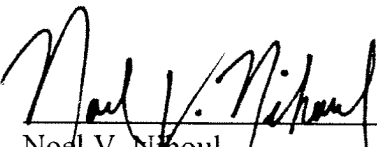
More importantly, the Carrier argues there was no vacancy for Claimant to fill. It asserts that Reaves was paid as a Track Inspector during this period of time, and not as a Foreman. According to the Carrier, the only dates that Summer did not work during this period were June 16 and June 17. Furthermore, as we noted in Award No. 51, the absence of the Foreman due to vacation, particularly for only two days, did not necessitate the bulletining of a vacancy and there is no requirement that vacation absences be filled by employees working on other gangs, even though they might be senior to employees who assume the duties of the vacationing employee.

Based upon the record before us, the Board finds that the Organization has not met its burden of showing that the Agreement was violated in this case.

AWARD: Claim denied.

  
Barry E. Simon  
Chairman and Neutral Member

  
Roy C. Robinson  
Employee Member

  
Noel V. Nihoul  
Carrier Member  
1/26/2010

Dated: January 22, 2010  
Arlington Heights, Illinois