

AWARD NO. 57
Case No. 57

Organization File No. D21711307
Carrier File No. 12(07-1067)

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 Carrier violated the Agreement when it failed to assign M. Cameron to operate the anchor cart machine on System Production Team (T-9) beginning on June 23, 2007 and continuing through August 9, 2007 and instead assigned junior employee J. Hooten.
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Cameron shall now each be compensated for the difference in pay between his trackman rate and that of a Class B. Machine Operator rate, including overtime for all dates beginning June 23, 2007 and continuing through August 9, 2007.

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.

Claimant and J. Hooten had both been assigned as production trackmen on System Production Gang 6XT9 when the Carrier assigned Hooten to operate an Anchor Cart, which is a Class B Machine. Hooten held this assignment from June 23 through August 9, 2007. It is undisputed that

Claimant has greater seniority than Hooten. It is apparent that both employees have seniority as Class B Machine Operators. It is also undisputed that Claimant was qualified for this position, was available and had notified his supervisor that he wanted to perform Machine Operator Class B duties.

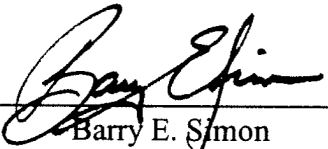
The Agreement governing System Production Gangs provides, in pertinent part, as follows:


Section 4 - Filling Vacancies Pending Bulletining and Assignment

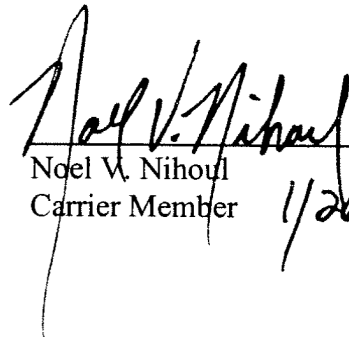
- A. All Foreman, Assistant Foreman and Machine Operator vacancies filled temporarily, including positions on machines or categories of machines listed in Section 25, pending assignment by bulletin, shall be filled as follows:
 - 1. By offering the position in seniority order to the employees who are working on the SPG where such vacancy exist, and who are listed on the SPG in the classification in which the vacancy exists, and who are not occupying a position within that classification or any higher classification.
 - 2. Failing to fill vacancies in accordance with (1) above, the position shall be offered in seniority order to the employees who are working on the gang where the vacancy exists, who are listed on the SPG Track Laborers Roster.

In accordance with this provision, it is evident that Claimant should have been offered the Machine Operator position before junior employee Hooten. While the Carrier has denied that Hooten worked the Machine Operator position, payroll records indicate otherwise. We conclude, therefore, that the Agreement was violated. Claimant is entitled to the earnings he would have received had he worked the Machine Operator position. We will direct that he be paid the difference between that amount and what he earned as a trackman.

AWARD: Claim sustained. Carrier is directed to comply with this Award within 30 days.


Barry E. Simon
Chairman and Neutral Member


Roy C. Robinson
Employee Member


Noel V. Nihoul
Carrier Member 1/26/2010

Dated: December 17, 2009
Arlington Heights, Illinois