

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 160
Case No. 160

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

CSX Transportation, Inc.

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it failed to bulletin a foreman/flagman position in connection with providing flag protection for contractor installing fiber optic cable between Mile Posts A763.7 and A840.9 on the Sanford Subdivision and when it failed and refused to assign Foreman/Flagman R. P. Jennings to perform foreman/flagman duties on the Sanford Subdivision beginning January 10, 2000 and continuing through March 18, 2000 and instead assigned junior Employees C. K. Hundley, J. Jones and J. V. Daughtery [System Files B16609000/12(00-0386) and B16608400/12(00-0348) CSX].
2. As a consequence of the violation referred to in Part (1) above, Claimant R. P. Jennings shall now be compensated for three hundred seven (307) hours' pay at the respective foreman/flagman's time and one-half rate of pay and be paid for the weekly per diem and travel allowance for the period beginning January 10, 2000 through March 18, 2000.

FINDINGS:

This Board, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and the Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act, as amended,; and
2. That the Board has jurisdiction over this dispute.

OPINION OF THE BOARD:

Rule 3 (Selection of Positions) provides, in pertinent part:

Section 3. Advertisement and award.

(a) All positions and vacancies will be advertised within thirty (30) days previous to or within twenty (20) days following the dates they occur. The advertisement shall show position title, rate of pay, headquarters, tour of duty, rest days and designated meal period.

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Section 4. Filling temporary vacancies

(a) A position or vacancy may be filled temporarily pending assignment. When new positions or vacancies occur, the senior qualified available employees will be given preference, whether working in a lower rated position or in the same grade or class pending advertisement and award. When furloughed employees are to be used to fill positions under this Section, the senior qualified furloughed employees in the seniority district shall be offered the opportunity to return to service. Such employees who return and are not awarded a position or assigned to another vacancy shall return to furlough status.

A careful review of the record indicates that the Carrier failed to bulletin the referenced Foreman/Flagman position until February 14, 2000 even though the performance of the disputed work began on January 10, 2000. By failing to act in a timely manner, the Carrier thereby violated Rule 3 of the Agreement.

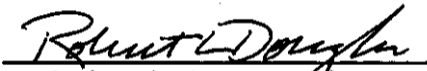
The record further proves that the Claimant held seniority within the Track Department and was working as a Track Inspector in the relevant territory and during the relevant time. The record contains sufficient evidence to prove that the Claimant had sought to perform the disputed work in a timely manner as reflected by an unrefuted letter, dated August 24, 2000, furnished by the Claimant. (Attachment 3 to Employees' Exhibit C.) Although the evidence proves that the Claimant had greater seniority than the employees who performed the disputed work, no credible evidence exists in the record that the Claimant ever bid for the bulletined position. As a result of the Claimant's greater seniority, the Carrier had a contractual obligation pursuant to Rule 3 to assign the disputed work to the senior Claimant rather than the junior employees who actually performed the disputed work.

Under these precise circumstances, the Claimant shall be compensated for the overtime that occurred in the performance of the disputed work between January 10, 2000 and February 14, 2000. No basis exists in the present record for the Claimant to receive

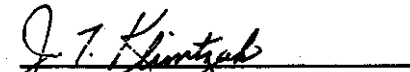
compensation after February 14, 2000 or to receive the requested weekly per diem and/or travel allowance.

AWARD:

The Claim is sustained in accordance with the Opinion of the Board. The Carrier shall make the Award effective on or before 60 days following the date of this Award.


Robert L. Douglas
Chairman and Neutral Member


D.D. Bartholomay
Employee Member


J.T. Klimczak
Carrier Member

Dated: 4-30-04