

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37271
Docket No. MW-36661
04-3-01-3-200

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned a car shop employe to perform Maintenance of Way work (operate front end loader to remove snow from tracks, roadway and parking area) at Frontier Yard in Buffalo, New York on February 1, 2000 instead of Maintenance of Way Machine Operator J. P. Tripi [Carrier's File 12(00-0294) CSX].
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. P. Tripi shall now be compensated for eight (8) hours' pay at the Class "A" Operator straight time rate of pay and be allowed credit towards vacation and all other benefits for February 1, 2000."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

As Third Party in Interest, the Transport Workers Union of America was advised of the pendency of this dispute, which chose not to file a Submission with the Board.

This claim involves the Carrier's assignment of a car shop employee to operate a front end loader to remove snow from tracks, a roadway, and parking area at the Frontier Yard shop. The Claimant was a furloughed Class "A" Machine Operator on the claim date.

The Organization contends that the Scope Rule is clear and unambiguous and expressly reserves the work of snow removal from track structures to BMW-represented employees, citing Third Division Awards 31752 and 32344. It asserts that any alleged past practice to the contrary is irrelevant in the face of clear contract language, and was not proven by the Carrier. Because the Claimant was awaiting recall from layoff, the Organization argues that this instance represents a true loss of work opportunity for him and entitles him to monetary relief.

The Carrier argues that the work in issue herein is not reserved to BMW-represented employees under the Scope Rule, which covers snow removal from track structures and the right-of-way, not roads and parking lots, and, in any event, would fall within the exception to the Scope Rule because it has admittedly been performed by shop craft employees in the past and at the time the Agreement was negotiated. The Carrier contends that snow removal is not exclusive to the Organization, noting that the Scope Rule permits employees previously performing such work on the property to continue to do so, citing Third Division Award 12409.

A careful review of the record on the property convinces the Board that the Organization failed to sustain its burden of proving that the Carrier violated the Scope Rule by its assignment of the snow removal work in this case. Determinative in this case is the following language of the Scope Rule:

“It is agreed that in the application of this Scope that any work which is being performed on the property of any former component railroad by employees other than employees covered by this Agreement may continue to be performed by such other employees at the locations at which such work was performed by past practice or agreement on the effective date of this Agreement;. . .”

During the processing of the claim on the property, the Organization submitted a typewritten statement of former employee Edward F. Suflita, Jr. who worked at Frontier Yard and was on the B.R.U.T.E. Labor-Management Team in 1998. Therein he explains that the type of work disputed in this claim had been performed by a Machine Operator before his retirement in the mid-1980's, but since that time when his position was not advertised, there has been inter-department squabbling with regard to performance of the work, with the Car Department doing the snow removal on an as needed basis. Suflita's statement goes on to state that the Car Department supervisor was willing to have a Track Department employee assigned to the car shop to perform this work within its budget, but the Track Department was not amenable because it was shorthanded and could not spare the position. When the matter could not be resolved, the Car Department rented equipment which it used to remove snow in and around the car shop, as it did on the claim date. This statement clearly establishes that car shop employees have been performing the disputed snow removal work at this location since at least the mid-1980's, and has used the front end loader to do so since at least 1998. Because car shop employees were doing this work at the time the Agreement was entered into in 1999, the Carrier established that it falls within the exception to the Scope Rule language noted above, and that complying with this existing practice does not violate the Agreement.

AWARD

Claim denied.

Form 1
Page 4

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04-3-01-3-200

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 5th day of November 2004.