

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 43125  
Docket No. MW-43247  
18-3-NRAB-00003-150429

The Third Division consisted of the regular members and in addition Referee Amedeo Greco when award was rendered.

(Brotherhood of Maintenance of Way Employees Division -  
(IBT Rail Conference

PARTIES TO DISPUTE: (

(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when on November 21, 22, December 6, 7 and 10, 2013, the Carrier assigned outside forces to perform Maintenance of Way work (removing snow) from the locations at the Yard in Queensgate, Ohio (System File I50366313/2014-157445 CSX).
- (2) The Agreement was violated when on December 13, 14 and 15, 2013, the Carrier assigned outside forces to perform Maintenance of Way work (removing snow) from the locations at the yard in Queensgate, Ohio (System File I15036711/2014-157714).
- (3) As a consequence of the violation referred to in Part (1) above, Claimants S. Hoover, A. Alexander and J. Fightmaster, shall each be allowed ‘ ... 40 hours straight time and 20 hours’ time and one half each, at vehicle operator rate of \$25.80. We also request that these days be credited towards vacation retirement and guarantee purposes.’
- (4) As a consequence of the violation referred to in Part (2) above, Claimants S. Hoover, A. Alexander, and J. Fightmaster shall each be allowed:

“... 144 hours divided equally at the current rates of pay.

We also request these days be credited towards vacation retirement and guarantee purposes.”

**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.

The Carrier assigned outside personnel to remove snow at its Yard in Queensgate, Ohio.

The Organization states that the work is covered by the Scope Rule of the September 1, 1999 Agreement and has historically been performed by BMW members, citing Referee Klein’s Award in Case No. 39138.

The Carrier states that the Organization has failed to meet its burden of establishing a past practice dating back to 1991, citing Referee Goldstein Award 6 of Public Law Board No. 6510.

The Klein Award and Goldstein Award state in essence that the Organization bears the burden of proving a past practice dating back to 1999.

While the Organization has shown that BMW members sometimes have performed the disputed work, it has failed to prove that any such practice dates back to 1999.

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**AWARD**

Claim denied.

**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 30th day of May 2018.