

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43134
Docket No. MW-43319
18-3-NRAB-00003-150534**

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 January 21, 22 and 28, 2014, the Carrier assigned outside forces to perform Maintenance of Way work (removing snow) from the roads and parking lots in and around the Fulton Yard in Richmond, Virginia on the Richmond Seniority District, C&O Division (System File G33805514/2014-163649 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants S. Taylor, D. Rae and M. Spikes ‘*** shall now each receive 16 hours at their respective time and one-half rates of pay in effect on the dates claimed. ***’”**

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 and ice at its Fulton Yard in Richmond, Virginia.

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. It also states that its Statement of Claim properly described the work area in dispute.

The Carrier states that the Statement of Claim is required to provide the specific location of each alleged violation and that it failed to do so; that the Organization only has jurisdiction over track structures and rights of way; and that the Organization has failed to meet its burden of establishing a past practice, citing Referee Goldstein's Award 6 of Public Law Board No. 6510 . The Carrier further states that the Organization must prove that any past practice at each location must date back to 1999 because the Scope Rule was then meant to preserve the bargaining unit work at that time, and that the Organization had failed to do that.

The Klein Award and Goldstein Award state in essence that the Organization bears the burden of proving that there is a past practice showing that BMW members dating back to the 1999 System Agreement have customarily or traditionally removed snow and ice on roads, parking lots, sidewalks and parking yards.

While the Organization has showed that BMW members at times have performed the disputed work, it has failed to prove that such a practice dates back to 1999.

AWARD

Claim denied.

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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.