

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43938  
Docket No. MW-44675  
20-3-NRAB-00003-180149**

**The Third Division consisted of the regular members and in addition Referee Meeta A. Bass 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 the Carrier assigned Roadmaster H. Almanza to perform Maintenance of Way Department work transporting employee D. Liras from Walkerton, Indiana to Hammond, Indiana on August 16, 2016 instead of calling and assigning Section Gang 5K03 Foreman M. Rust to perform said work (System File H42407816/2016-210153 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Rust shall now be compensated four (4) hours at his applicable overtime rate of pay.”**

**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.

By letter dated August 15, 2016, the Organization submitted a claim on behalf of the Claimant alleging that the Carrier violated the agreement when the Roadmaster transported the maintenance of way employ to his hotel. On October 19, 2016, the Carrier denied the claim stating there were no violation of the Agreement. The claim was conferenced on November 15, 2016 with no change in the position of the Carrier. As the parties were unable to resolve this dispute, the claim was advanced and the same is before this Board for adjudication.

The Organization contends that the Carrier violated the Agreement when the Roadmaster transported an employee to his hotel. The Claimant held seniority and was assigned as a track foreman, while holding qualifications as a vehicle operator as well. The Organization contends that the work performed by the Roadmaster, transporting Maintenance of Way employees was reserved to craft employees and is specifically identified as scope-covered work. In addition to the language of the Scope rule, the Claimant statement indicates this work is traditionally and customarily work that the Claimant performs on a regular basis. The Organization argues that the Agreement does not contemplate convenience or economics as a basis for assigning overtime. It is the position of the Organization that the claim should be sustained.

The Carrier contends that the Organization failed to establish that the Carrier violated any rules or agreements. The Carrier argues that the driving employees to their personal residence or hotel after the end of the day is not-scope-covered work. The Carrier further argues that driving an employee to his hotel or personal residence is not recognized as Maintenance of Way work. The Carrier contends that Scope Rule requires that work must satisfy the three threshold requirement to be reserved under the scope rule. The rule requires the work to be identified in the rule, be performed in connection with common carrier services, and the work must be performed on property. Further the Carrier argues that work not specifically reserved by the Scope Rule can only be reserved by showing a past practice and must demonstrate a past practice predating and following the 1999 System Agreement. The Carrier argues that transportation of employees to their homes or hotels has not been customarily or traditionally performed by BMW forces. The Carrier maintains that the Organization has failed to meet its burden of proof, and the claim should be denied.

**Applicable Agreement Provisions**

The pertinent provisions of the Agreement Between CSX Transportation, Inc., and its Maintenance of Way Employees Represented by the Brotherhood of Maintenance of Way Employees, effective June 1, 1999 are the Scope Rule, Rule 1, Rule 3, Rule 4, Rule 11, and Rule 17. These rules are incorporated herein as if fully rewritten.

After review of the record, submissions and arguments, the Board finds the Organization has met its burden of proof. The claimed work, transportation of employees to the employer-provided hotel accommodation, at the end of their shift is work reserved to the BMWF forces. The Carrier failed to refute evidence of the same. The Board finds that the Carrier violated the Agreement when the Roadmaster transported the employee.

**AWARD**

Claim sustained.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

Dated at Chicago, Illinois, this 5th day of March 2020.