

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44045
Docket No. MW-44105
20-3-NRAB-00003-170198**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens 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 allowed Supervisor K. Gunter to perform Maintenance of Way duties (transportation of Maintenance of Way employees) on the Clifton Forge Seniority District on June 8 and 9, 2015 and failed to assign Mr. J. Kimberlin thereto (System File G31810515/2015-190009 CSX).**
- (2) The Agreement was further violated when the Carrier assigned junior employees A. Seldomridge and A. Hansford to perform Maintenance of Way duties (erection and maintenance of signs, including warning signs) near Mile Post CA 351.0 on the Clifton Forge Seniority District on June 8 and 9, 2015 and failed to assign Mr. J. Kimberlin thereto.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant J. Kimberlin ‘... shall now receive the same amount of straight time and overtime hours expended by junior employee Seldomridge on June 8, 2015 and the same amount of straight time and overtime hours expended by junior employee Hansford on June 9, 2015 ***’”**

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 Claimant has established and holds seniority within the Carrier's Maintenance of Way Department. On the dates giving rise to this dispute, he was assigned and working as a vehicle operator.

The Organization filed a claim asserting that on June 8 and 9, 2015, the Carrier allowed Supervisor K. Gunter to perform Maintenance of Way duties on the Clinton Forge Seniority District and failed to assign the Claimant. The claim further alleges that the Carrier assigned junior employees A. Seldomridge and A. Hansford to perform other Maintenance of Way duties on the same seniority district, again while failing to assign the Claimant.

The Carrier's denial of the claim states there was no violation of the Agreement because Gunter transported Seldomridge and Hansford in his own vehicle, not a CDL vehicle, so the work was not ordinarily and customarily performed by the Claimant. The Carrier asserts that the other work performed is work ordinarily and customarily performed by Seldomridge and Hansford, and thus, they were properly given preference. The parties were unable to resolve the dispute on-property and the claim is now properly before this Board for final adjudication.

The on-property correspondence includes a statement from Roadmaster Gunter that his personal vehicle was used to transport Seldomridge and Hansford and that a CDL vehicle was not used at any time. It also states that Seldomridge and Hansford erected their own signs. Gunter denied removing any signs.

The Organization offered no evidence to contradict Gunter's statement that the disputed work was not work which was ordinarily and customarily performed by the Claimant. Therefore, the Organization has failed to meet its burden of proving that the Agreement was violated.

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 18th day of June 2020.

LABOR MEMBER'S DISSENT TO
AWARD 44045, DOCKET MW-44105

(Referee Kathryn Van Dagens)


The Majority erred application in its finding that the Organization failed to establish that transportation of Maintenance of Way employees was ordinary and customarily performed by the Claimant and not a supervisor. The Majority simply misapplied the clear language of the Scope Rule, which states:

“The following work is reserved to BMW members: all work in connection with the construction, maintenance, repair, inspection or dismantling of tracks, bridges, buildings, and other structures or facilities used in the operation of the carrier in the performance of common carrier service on property owned by the carrier. This work will include *** **transporting maintenance of way employees**; *** and any other work customarily or traditionally performed by BMW represented employees. In the application of this Rule, it is understood that such provisions are not intended to infringe upon the work rights of another craft as established. It is also understood that this list is not exhaustive.”

The claimed work is reserved by the clear and unambiguous language of the Agreement. Accordingly, the Organization does not have to establish any such past performance. Especially in light of the fact that the Scope Rule states, “*** and any other work customarily or traditionally performed by BMW represented employees. ***” That language establishes that the only time the Organization must demonstrate work has been previously performed by BMW members only when the claimed work is not specifically listed within the exhausted list of reserved work, which transporting Maintenance of Way employees is.

For these reasons, I must dissent.

Respectfully submitted,


Zachary C. Voegel
Labor Member