

NATIONAL MEDIATION BOARD
WASHINGTON, DC

PUBLIC LAW BOARD NO. 7163

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE

AND

CSX TRANSPORTATION, INC.

Docket No. 108
Employee: D. Cordell, A. Egy

Neutral Member: Barbara Zausner
Carrier Member: Robert A. Paszta
Organization Member: Timothy W. Kreke

STATEMENT OF CLAIM

- 1- The Agreement was violated when the Carrier failed to assign Mr. D. Cordell and A. Egy to flag for contractors dismantling and constructing an overhead road bridge at Mile Post QC 264.2 on the Albany Service Lane beginning July 6, 2009 and continuing instead of assigning Operating Craft employees. (System File DCAEFlagC.019/2009-052863)
- 2- As a consequence of the violation referred to in Parts (1) above, Claimants D. Cordell and A. Egy shall now be compensated for an equal and proportionate share of all straight time and overtime hours expended by the Operating Craft employees in the performance of the aforesaid work beginning on July 6, 2009 and continuing.

FINDINGS

Upon the whole record and on the evidence, the Board finds that the parties herein are Carrier and Employer within the meaning of the

Railway Labor Act, as amended; that this Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

On July 6, 2009 a contractor began a bridge construction and removal project on a highway bridge. The work was being performed near the right-of-way track below the bridge. The Carrier assigned a transportation employee to flag at the worksite. The Organization maintains the work should have been assigned to Maintenance of Way Employees pursuant to Section 8 of the Agreement. It contends the work “held the potential to undermine the integrity of the track structure.”

Section 8 – Flagging Work, provides in pertinent part:

- A. 1. When flagging work is required in connection with Track Department work or other work that holds the potential to undermine the integrity of the roadbed or track structure, an Assistant Foreman – Flagman from the Track Department shall be assigned in accordance with Rule 3, Section 3 or 4, as applicable.
2. When flagging work is required in connection with B&B Department work or other work that holds the potential to undermine the integrity of structures such as bridges or buildings an Assistant Foreman – Flagman from the B&B Department shall be assigned in accordance with Rule 3, Section 3 or 4, as applicable.

Both parties cite the interpretive rule in Question and Answers 23:

Question:

If a contractor is employed by a government agency to paint an overhead highway bridge and the carrier determined that a flagman is necessary, may a T&E employee be assigned to flag?

Answer:

Yes, for train traffic. However, if other maintenance, construction or demolition work is performed on a highway bridge that has the potential to undermine the integrity of the roadbed or track beneath the highway bridge, then a Track Department Assistant Foreman – Flagman should be assigned.

The parties also agree that Award 80 of this Board applies. In that case the Carrier determined that there was the potential for material to fall on the track and it assigned a Maintenance of Way employee from the Bridge and Building Department to perform the flagging work. The Organization claimed the work belonged to the Track Department. The Board agreed.

In the instant matter, the Carrier determined that a flagman was needed to protect trains, equipment and employees. Therefore, it assigned an Operating Department employee to flag at the worksite. It cites Section 8.B. (3), "CSXT shall assign a flagman only in cases where it determines a flagman is required" in addition to Section 8.B. The Carrier also determines whether a project has the potential to undermine the integrity of the track structure. The work in question was performed by outside forces and not by a particular department. The Carrier acknowledges that if the project had been one with the potential to undermine the integrity of the track structure, the Agreement would require that a Track Department employee be assigned to flag and monitor.

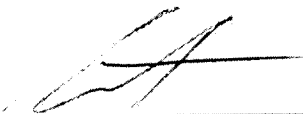
We read the Agreement the same way as the Board did in Award No. 80. The Carrier determines if flagging is required. If it determines that the project does not have the potential to undermine the integrity of the track structure it need not assign an employee from the Track Department. Once the Carrier determines that a flagman is required, the carrier then determines if there is any potential to undermine the integrity of the track structure. If the Organization does not agree with the carrier's determination as to the potential to undermine the integrity of the track structure, it bears the burden of proving the carrier wrong. On this record, the Organization has not met that burden.

AWARD

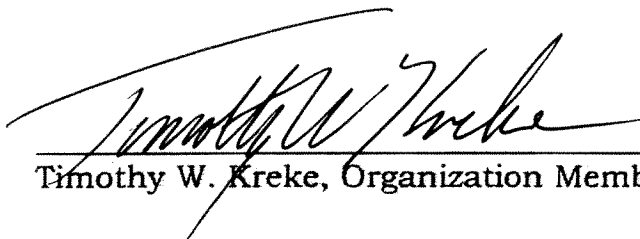
Claim denied.



Barbara Zausner, Neutral Board Member
March 27, 2012



Robert A. Paszta, Carrier Member



Timothy W. Kreke, Organization Member