

**Public Law Board 7163**

Award No. 18

**Parties to the Dispute:**

05-3-268

**Brotherhood of Maintenance of Way Employees Division**

**IBT Rail Conference**

**and**

**CSX Transportation, Inc.**

**STATEMENT OF CLAIM:** “Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned Track Foreman W. Bosley to perform track inspector work (inspect track between Mile Posts BAH 29.9 and BAH 63.7 and related work) on December 1, 2, 8, 9, 16, 21 and 22, 2003 instead of Track Inspector M. Sisler [System File G25821904/12(04-0548) CSX].

“(2) The Carrier violated the Agreement when it assigned Machine Operator W. Mayhew to perform track inspector work (inspect track between Mile Posts BAH 29.9 and BAH 63.7 and related work) on January 5, 6 and 14, 2004 instead of Track Inspector M. Sisler [System File G25823604/12(04-0647) CSX].

(3) As a consequence of the violation referred to in Part (1) above, Claimant M. Sisler shall now be compensated for forty-eight (48) hours at his respective straight time rate of pay and for four (4) hours at this respective time and one-half rate of pay.

(4) As a consequence of the violation referred to in Part (2) above, Claimant M. Sisler shall now be compensated for twenty-four (24) hours at his respective straight time rate of pay.”

**Findings:**

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934. Public Law Board 7163 has jurisdiction over the parties and the dispute involved herein.

The Organization's argues that Claimant holds seniority as a track inspector whose position was abolished in December 2003. He continued to work in the same area in a different track inspector position. Employee Bosley is a Track Foreman in the Track Department and employee Mayhew is a machine Operator. The Organization claims that employee Bosley performed track inspection work in the territory that Claimant had inspected prior to the position being abolished, on seven dates in December, 2003 and employee Mayhew performed track inspector work on three days in January 2004 on the same territory.

The Organization continues that Claimant was entitled to perform the track inspection work as opposed to Bosley and Mayhew who were not regularly assigned as Track Inspectors. Separate classes exist on separate seniority rosters. The track inspection work at issue was regular and planned and should have been Claimant's because he was the senior track inspector on the territory.

The Carrier responds that the claim should be dismissed because the claim before this Board is fundamentally different than the claim filed on January 30, 2004. Further, the remedy claimed is different in both claims from the claims that were handled on the property. On the merits, the Carrier asserts that the track inspection at issue is intermittent work. The Carrier applies Rule 3 Section 4 to intermittent work. When that Rule is applied to the instant situation, the Claimant cannot prevail. Further, Claimant could not have performed the track inspection work at issue because he was performing track inspection work at a different location at the time of the alleged violations.

After a review of the record, this Board need not address the procedural argument that the Claims have been changed during the handling. Even if this Board were to rule for the Organization on the substantive argument, this Board is unable to address the substantive claim. The Organization claims in page 2 of the submission that "[t]he track inspection work involved here was regular, planned track inspection work that had, until recently, been a part of the Claimant's regular duties as track inspector" and the Carrier counters at page 9 of the submission citing to a letter from the Director of Labor Relations discussing a statement by the Division Engineer that the track inspection work was intermittent. Neither the Organization's contention that the work was regular and planned nor the Carrier's statement that it was intermittent is supported by anything in the record. Assertion is not evidence and conjecture is not conclusion.

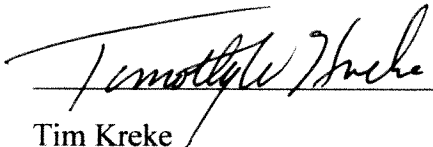
When there is a dispute of relevant fact, this Board must dismiss the Claim. Here, whether the work was regular or intermittent is a fact in dispute and central to the analysis of the claim. Claim dismissed.

**Award:**

Claim dismissed.

Brian Clauss

Brian Clauss  
Chairman and Neutral Member



Tim Kreke  
BMW

Organization Member



Robert A. Paszta  
CSX Transportation, Inc.

Carrier Member

Dated this 26<sup>th</sup> day of January 2012