

AWARD NO. 80

Case No. 80

Organization File No. A02835208

Carrier File No. 2009-034211

PUBLIC LAW BOARD NO. 7163

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,
) INTERNATIONAL BROTHERHOOD OF TEAMSTERS
TO)
)
DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier temporarily assigned Bridge and Building (B&B) Department employee S. Hardy and subsequently assigned B&B Department employee M. Peterson by improper advertisement and award to perform Track Department assistant foreman-flagman duties between Mile Posts CFP 111.6 and CFP 111.7 beginning on August 2, 2008 and continuing through October 13, 2008.
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Mallette shall now be compensated “*** for all straight time and overtime hours that were expended by the B&B Department employees performing this described Track Department flagging work instead of Claimant Mallette up until the date of October 13, 2008 when he was assigned this same work at this same Mile Post CFP 111.6 to Mile Post CFP 111.7 location by the carrier.’

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

Beginning on August 2, 2008 Flippo Construction Company was engaged in the performance of maintenance, construction and demolition on a highway bridge that spanned over Carrier's track. This bridge was not owned by the Carrier. Because there was the potential for material from this work falling onto the Carrier's trackage, the Carrier assigned a Maintenance of Way employee to perform flagging work. The employee assigned by the Carrier to do this work was employed in the Bridge and Building Department. The Organization asserts this work belongs to the Track Department.

Section 8 of the parties' Agreement addresses Flagging Work. It states, in relevant part, as follows:

1. When flagging work is required in connection with Track Department work or other work that hold 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 hold 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.

The parties have agreed upon Questions and Answers that interpret this rule. They state:

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.

24. Question

Who should be assigned to perform flagging work in connection with construction, maintenance or demolition work on a railroad bridge?

Answer

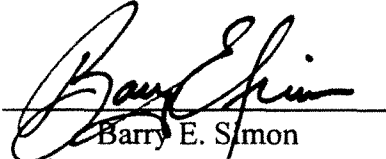
In those instances where CSXT determines that a flagman is necessary, a B&B Department Assistant Foreman - Flagman should be assigned except in those situations where the bridge work holds the potential to undermine the integrity of the roadbed or track structure, in which case a Track Department Assistant Foreman - Flagman should be assigned.

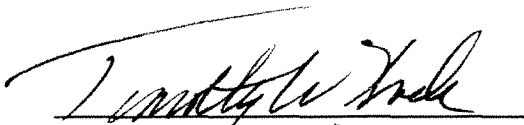
It is the opinion of the Board that both Questions 23 and 24 address the issue presented by this claim. Question 23 addresses it more directly because it concerns work done on a highway bridge or a bridge other than one owned by the Carrier. The Carrier has taken the position that it did not believe the work being performed would undermine the track structure. If that were the case, the Carrier would have been privileged to have the flagging work performed by a train service employee. On the other hand, if there was the potential that it would undermine the integrity of the track structure or roadbed, Question 23 allows only the use of a Track Department employee to perform the flagging work. The same is true under Question 24 where the work is being performed on a railroad bridge. It is clear from these two examples that Bridge and Building Department employees own this work only if there is no risk to the roadbed or track structure and the work is on a railroad bridge, or if the work has the potential to undermine the integrity of structure. Otherwise, the default position is stated in Section 8.A.1. of the Agreement and the work belongs to the Track Department.


We find that the Agreement was violated when the Carrier chose to assign a Bridge and Building Department employee to perform this work, rather than a Track Department Employee.

We will remand the dispute to the parties to determine the appropriate remedy. The Board will retain jurisdiction should they be unable to do so.

AWARD: Claim sustained in accordance with the above Findings.


Barry E. Simon
Chairman and Neutral Member


Timothy W. Kreke
Employee Member June 27, 2011


Noel V. Nihoul
Carrier Member 7/22/11

Dated: May 31, 2011
Arlington Heights, Illinois