

PUBLIC LAW BOARD NO. 7163

AWARD NO. 7

CASE NO. 7

Carrier File: 12 (03-0547)

PARTIES TO
THE DISPUTE: Brotherhood of Maintenance of Way Employes
Division - IBT Rail Conference
vs.
CSX Transportation, Inc.

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied.

STATEMENT OF CLAIM:

- "1. The Agreement was violated when the Carrier assigned Sheet Metal Worker R. Shonkwiler and Electrician D. Taylor to assist B&B Foreman R. Burrows in performing Maintenance of Way work (Closing and securing windows) in the Collinwood Diesel Shop on February 11, 2003, instead of B&B Mechanics S. LaCavera and G. Pongonis [Carrier's File 12(03-0547) CSX].
2. As a consequence of the violation referred to in Part (1) above, Claimants S. LaCavera and G. Pongonis shall now each be compensated for eight (8) hours at their respective straight time rates of pay."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The operative facts leading to the instant claim are largely undisputed. On the claim date, three employees were assigned to close and secure the high bay windows of the diesel shop to minimize heat loss. The window frames and jambs were metal. Access to the windows was achieved by using the catwalk atop the shop's bridge crane. The electrician was used to operate the crane not only because of his qualification to do so but also because certain electrical panels had to be locked and tagged out while the other two employees were on top of the crane. A sheet metal worker used a crow bar to hold each window shut while the B&B foreman drilled holes and fastened them with sheet metal screws.

The Organization claimed the specific work was scope-covered via the applicable Scope Rule and by past historical performance of the identical work as well as closely related work. The Carrier, to the contrary, asserted the specific work had been normally performed by other crafts and was not reserved to the Maintenance of Way forces.

The applicable Scope Rule specifically reserves certain listed types of work to covered

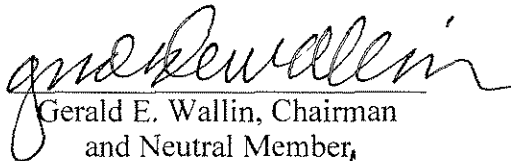
employees. Among the listed types is maintenance of buildings. However, the rule also contains a provision that qualifies the reservation of listed work. It provides that covered work may continue to be performed by other craft employees if they were performing it on the effective date of the Agreement.

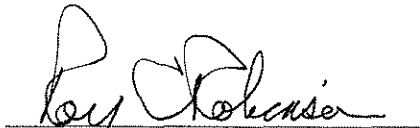
The Carrier presented statements of two supervisors to the effect that sheet metal workers had performed the closure work in the past and that the only window work previously performed by Maintenance of Way forces was replacing glass panes when needed. Although the Organization provided a competing statement containing ten signatures, its text primarily described other forms of window maintenance and made only a passing reference to window closure work. At best, it merely creates a material conflict of fact over the past performance of the specific work.

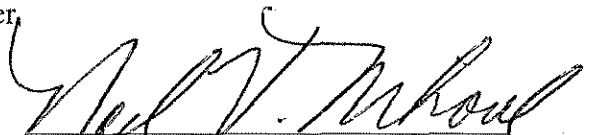
It is well settled that the Organization bears the burden of proof to establish that the specific work was scope-covered and is not encompassed by the qualifier that permits continued performance of it by other crafts. At most, on this record, the Organization has shown only that its position is the subject of an irreconcilable conflict of material fact. We have no proper basis for resolving such conflicts in the Organization's favor. Therefore, we must find that a violation of the Agreement has not been proven by the record before us.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


R. C. Robinson,
Organization Member


J. T. Klimtzak,
Carrier Member

Date: Dec 12, 2008