

AWARD NO. 128
Case No. 128

Organization File No. 160756110
Carrier File No. 2010-075009

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 failed to assign Track Department employees T. Speer, J. Hill, J. Stricklin, J. Finch, J. Joiner, S. Johnson and G. Schaefer to perform the Track Department work of installing new cross-buck signs and posts at every crossing beginning at Mile Post 000307.2 and continuing over the entire territory of the S&NA North Seniority District of the Nashville Division beginning on September 7, 2010 and continuing and instead assigned said work to Gang 6MP1 of the B&B Department.
2. As a consequence of the violation referred to in Part 1 above, Claimants T. Speer, J. Hill, J. Stricklin, J. Finch, J. Joiner, S. Johnson and G. Schaefer shall now be compensated “. . . for eight (8) hours straight time, and two (2) hours overtime, including expenses, for each claimant, for each date, beginning on September 7, 2010, and continuing until the violation stops, at their respective straight and over-time rates of pay.”

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.

It is undisputed that the Carrier utilized B&B Department employees to install new cross-buck posts and signs at all grade crossings on the S&NA North Seniority District of the Nashville Division, beginning at Mile Post 000307.2. The Organization has filed this claim asserting that such work is exclusively reserved to Track Department employees. The Carrier denied the claim, arguing that the work is not exclusive to the Track Department and that it has in the past been performed by B&B Department employees.

The Organization has cited the Scope Rule, which reserves the work of erecting and maintaining crossing and warning signs to its members. It has not, however, referred to any provision of the Agreement stating that this work is either Track Department or B&B Department work. Rather, it notes that, under Rule 1 of the Agreement, “the work of constructing, maintaining, repairing, inspecting and dismantling of track and appurtenances thereto is reserved to and performed by employees of the Track Department.” It then argues that “cross-buck posts and signs at road crossings are appurtenances to road crossings.” That is a step we are not prepared to take. Before the introduction of automated crossing protection, it was common for a flagman to stop vehicular traffic for an oncoming train. Shanties were erected adjacent to the track to provide the flagman with protection from the elements. By the Organization’s logic, these buildings would be built and maintained by the Track Department rather than the B&B Department as the shanties were “appurtenances to road crossings.” The Board seriously doubts that such was the case.

The Organization’s alternative argument is that this work has historically been performed by Track Department employees. In support of its position, it has furnished a statement from Claimant Speer, signed by seven other employees, stating:

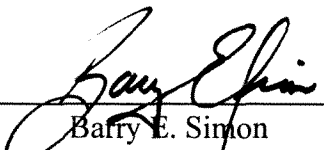
I am protesting the denial of the above claim from Mr. Fortune. I have been working for almost 11 years on the S&NA North sub and the Maintenance of Way Dept. men have always had to deal with the maintenance of crossbuck signs, whether it was putting new ones up, or adjusting them, or killing the vegetation surrounding them. From 2007 til March of 2010 I was a Track Inspector and in the ITIS program we had to inspect the crossbuck signs on a monthly basis. We have never seen B&B men out here inspecting them or maintaining them ever. I also talked to the B&B Foreman that was in charge of putting the signs up and he stated that they stayed on the S&NA North territory for approximately 2 months. There were 2 B&B Foremans and 4 B&B mechanics that were involved in installing crossbucks. Two of the men had to be running machines because they had rented a skidsteer with an auger to install them. Below is a list of signatures of men that work in Cullman, AL that can verify that these statements are also true.

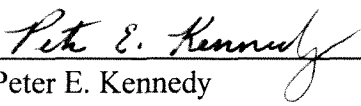
To establish exclusivity based upon past practice, arbitral panels in this industry have almost uniformly required a showing of a *systemwide* past practice. See, for instance, Third Division Award No. 36088, quoting Third Division Award No. 26548. That Award, in turn, quoted Third Division Award No. 20425, holding:

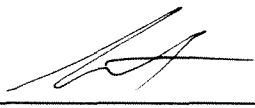
It is well established that Claimant must bear the burden of proving exclusive jurisdiction over work to the exclusion of others. This Board has also found that when there is a jurisdictional question between employees of the same craft in different classes, represented by the same Organization, the burden of establishing exclusivity is even more heavily upon Petitioner. (Awards 13083 and 13198)

Given the breadth of the CSX system, this Board cannot find that the statement of eight employees working on a single subdivision is sufficient to meet the Organization's heavy burden.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Peter E. Kennedy
Employee Member


Robert Paszta
Carrier Member

Dated: January 7, 2013
Arlington Heights, Illinois