

Public Law Board 7163

Award No. 49

Parties to the Dispute:

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 Agreement was violated when the Carrier assigned fifteen (15) non-BMWE employes (such as Trainman F. Plumbo, T. Lewandowski, M. Lewandowski, R. Wilson, R. Dye, R. Zimher, Roadmasters J. Distin, Rohauer, Doormeyer and other Car Department and clerical "employes) to perform Maintenance of Way work (cutting trees and brush and yard cleaning) at Frontier Yard in Buffalo, New, York on April 20, 2007 [System File YarCleC.017/12(07-0965) CSX].

(2) The Agreement was violated when the Carrier signed non-BMWE employes M. Lewandowski and R. Dye to perform Maintenance of Way work (pick up scrap, trash, debris and related yard cleaning) at the Harlem Avenue and Broadway entrance of Frontier Yard in Buffalo, New York on April 24, 2007 [System File YarCleC.027/12(07-0966)].

(3) As a consequence of the violation referred to in Part (1) above, Claimants J. Thoman, L. Mages, D. Battista, H. Hinze, R. Harbison, R. Stoye, F. Marchetti, R. Delprince, E. Scibilia, R. Witkowski, D. Gellerson, A. Tripp, J. Neary, R. Sander and A. Tabone shall now be compensated at their respective and applicable rates of pay for an equal proportionate share of the total straight time and overtime hours expended by the non-BMWE employes in the performance of the aforesaid work.

(4) As a consequence of the violation referred to in Part (2) above, Claimants J. Thoman and L. Mages shall now each be compensated for ten (10) hours at the respective straight time rates 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 presented two claims alleging that non-BMWE personnel performed Maintenance of Way work in violation of the Scope Rule. The claims involve the same location, substantially the same arguments and a four day period between the two claims. The violation of the Scope Rule was not only a clear violation of the stated work in the Scope Rule, but it was also work that has been customarily and historically performed by BMWE personnel.

The Carrier responds that the claims were improperly joined and that the joinder was improper because the cases were factually dissimilar. Further, the Organization cannot show that the work at issue was covered by the Scope Rule because the Scope Rule is silent concerning the meaning of "yard cleaning." Yard cleaning means the train yard and not parking lots, roads, sidewalks and other areas not "in and around track structures." Moreover, the Organization cannot show that the work was historically and customarily performed by BMWE employees and the Claim lacks sufficient specificity to establish a valid claim.

Generally, claims are not joined before a Board for obvious reasons such as separate issues, work, locations, and defenses. However, after a review of the record, the Board finds that the two claims were not improperly joined because the claims involve similar work, the same yard and a similar period of time. Further, the arguments and the defenses are substantially similar or nearly identical.

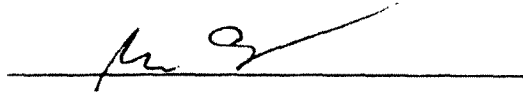
The Scope Rule provides, in pertinent part,

The following work is reserved to BMWE members: all work in connection with the construction, maintenance, repair, inspection or dismantling of all tracks, bridges, buildings. . .cleaning and removal: yard cleaning; security and ornamental fences; distribution and collection of new and used track; bridge and building material . . .and other work customarily or traditionally performed by BMWE represented employees.

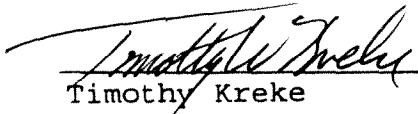
The work at issue is covered by the Scope Rule. Accordingly, the Organization has established a violation of the Collective Bargaining Agreement. The Carrier defenses are not dispositive. Claim sustained.

Award:

Claim is sustained.

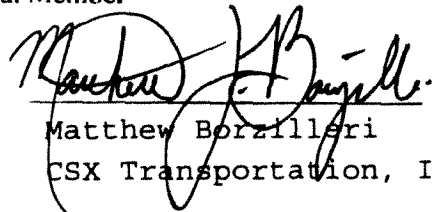


Brian Clauss
Chairman and Neutral Member



Timothy Kreke
BMWED

Organization Member



Matthew Borzilleri
CSX Transportation, Inc.

Carrier Member

Dated this 17th day of February 2011