

AWARD NO. 154

Case No. 154

Organization File No. 156705012

Carrier File No. 2012-125231

**PUBLIC LAW BOARD NO. 7163**

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

**STATEMENT OF CLAIM:**

1.     The Agreement was violated when the Carrier assigned Mechanical Department employees T. Byrd, T. Meadows and D. Young to perform Maintenance of Way work (dismantling a retaining wall, erection of a new retaining wall and sign installation) in and around Mile Post 00H323.0 of the Nashville Division and failed to properly assign Claimants D. Jost and D. Clark to perform the work on May 7, 8, 9, 10, 11, 14, 15, 16, 17 and 18, 2012.
2.     As a consequence of the violation referred to in Part 1 above, Claimants D. Jost and D. Clark shall now be allowed forty (40) hours straight time, (each) at their respective straight 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.

The Organization filed this claim asserting that Mechanical Department employees performed work that is reserved to B&B employees covered by the Agreement when they tore down a retaining wall, erected a new retaining wall and posted new signs at the Evansville, Indiana Car Shop

from May 7 through 18, 2012. The Organization relies upon the Scope Rule which states it covers employees represented by the BMWED engaged in work recognized as Maintenance of Way work, such as "construction, dismantling, demolition, repair and maintenance of . . . building and other structures." It further asserts the Rule reserves to BMWED members "all work in connection with the construction, maintenance, repair, inspection or dismantling of . . . buildings, and other structures or facilities used in the operation of the carrier in the performance of common carrier service on property owned by the carrier" including "erection and maintenance of signs, such as . . . signs attached to buildings or other structures . . . ."

The Carrier has responded with two defenses to the claim. First, it argues that the Organization has failed to establish a factual basis for its claim. In support of its position, it cites Award No. 118 of this Board, holding that "the Organization is responsible for the burden of proof to establish its claimed violations of Rules 1, 4, 11 and 17."

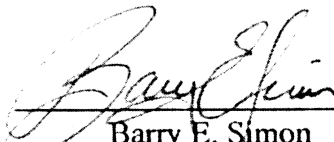
Secondly, the Carrier says the Agreement provides that work is reserved to covered employees unless such work "is being performed on the property of any former component railroad by employees other than employees covered by this Agreement," in which case that work "may continue to be performed by such other employees at the locations at which such work was performed by past practice or agreement on the effective date of this Agreement." The Carrier asserts that the work complained of has been performed at this location by past practice by several crafts in the Mechanical Department "for years before and after the BMWED System Agreement of June 1, 1999."

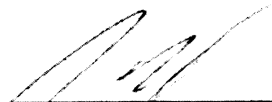
This is a classic case of how not to handle claims. To prevail in arbitration, the party with the burden of proof must offer proof. It is not sufficient to simply make allegations, particularly


when those allegations are challenged. Here, neither party has offered any evidence to support its allegations. If a wall had been built over a period of twelve days, there certainly could have been evidence that the construction was taking place. Yet no pictures, statements from employees or other records were ever submitted during the handling on the property. Similarly, if the Carrier had used employees of other crafts to perform similar work at this location, some records should have been available to provide support for its affirmative defense.

Because the Organization bears the initial burden of proof in this case, the Board must find that the burden has not been met and the claim must be denied.

AWARD: Claim denied.

  
Barry E. Simon  
Chairman and Neutral Member

  
Andrew Mulford  
Employee Member

  
Rob Miller  
Carrier Member

Dated: September 26, 2014  
Arlington Heights, Illinois