

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7163**

Brotherhood of Maintenance of Way)	
Employees Division, IBT Rail Conference)	
)	Case No. 173
and)	Award No. 173
)	
CSX Transportation, Inc.)	

Statement of Claim

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when it assigned CSXT Transportation Department employees to perform BMW Scope covered duties during a clean sweep of the Carrier’s Curtis Bay Yard beginning on February 20, 2012 and continuing through February 24, 2012 and failed to properly assign such work to BMW-represented forces (System File A02806312/2012-123358 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimants N. Gale, K. Wheeler, A. Brooks, N. Pratani, M. Martin, J. Priddy, J. Hermes, W. Conley, S. Lundin, D. Ellecamp, L. Cherneski, J. Fink, W. Crippen, J. Mellott, K. Merritt, D. Liles, R. Blanding, G. Howard, W. Brooks and R. Myers shall now each ‘*** receive the same (40) hours that were expended by the (20) Transportation Department employees ***’ (Employees’ Exhibit ‘A-1’).”

Background

Claimants maintain seniority in various classifications within the Maintenance of Way Department. During the period of February 20 - 24, 2012 the Carrier conducted a “clean sweep” at Curtis Bay Yard. A “clean sweep” consists of the Carrier assigning multiple crafts to remove trash and debris as a means to reduce hazards in the yard.

According to the Organization, the “clean sweep” involved Transportation Department (T&E) employees collecting used track material in violation of Rules 1, 3, 4, 11 and 17 as well as Section 4.B.1 in the Memorandum of Agreement (MOA) dated January 23, 2012. The Organization states that the Carrier may assign non-BMW forces to perform elementary clean and sweep trash pickup duties; however, the claimed work is reserved to BMW forces under the Scope Rule where “all work in connection with construction, maintenance, repair, inspections or dismantling of tracks, bridges, buildings and other structures or facilities will be performed by BMW forces” and, identified therein, is yard cleaning and the collection and distribution of track material.

The MOA fortifies the scope rule, the Organization asserts, because it states that yard cleaning would not be assigned to contractors or assigned to other crafts except for an explicit exception. In this regard, “clean sweeps” is an explicit exception whereby the parties agreed that other crafts may participate in the work but could not perform BMW work. Under the MOA and the scope rule, trash pickup does not

include the collection or distribution of track material such as occurred in this claim by T&E Department employees. The Organization submitted statements signed by eight (8) employees in support of its claim; BMW shared the statements with the Carrier during conference. Besides the employees' statements, the Division Engineer stated in writing that "[e]ngineering employees assisted the Transportation employees by picking up track materials[.]"

The remedy should be granted as the Carrier's arguments (hours excessive and fully employed) are not valid. BMWED states that the Carrier's assertion of excessive hours claimed refers to painting switch points. The Organization identified the Claimants, identified the claimed work performed by T&E Department employees, when it was performed and where. Third Division Award 24280 shows that the proper rate of pay for this situation is overtime compensation.

The Carrier denies violating the MOA or any rules; T&E Department employees collected trash but did not pick up any track materials. Engineering Department employees picked up track materials whereas T&E Department employees picked up only items other than track material such as garbage. The MOA states that employees of various crafts may be assigned to clean the yard without violating the Agreement. The Carrier asserts it was not provided the eight (8) statements referenced by BMW as included with the Organization's post-conference letter.

In short BMW has not met its burden of proof establishing a violation of the rules or MOA. Should the Board find a violation, the Carrier notes that Claimants were involved with the "clean sweep" and, thus, not available to perform work on their behalf so monetary relief is unwarranted.

Findings

Public Law Board 7163, upon the whole record and all the evidence, finds that (1) the parties to this dispute are Carrier and Employees within the meaning of the Railway Labor Act as amended, (2) the Board has jurisdiction over this dispute and (3) the parties to this dispute were afforded due notice of the hearing and participated in this proceeding.

Having reviewed the evidentiary record established by the parties in this proceeding, including the arbitral precedent relied upon by each party, the Board finds that the claim was timely and properly presented and handled by the Organization at all stages of appeal up to and including the Carrier's highest appellate officer.

The Board finds, further, that the eight (8) statements were disclosed to the Carrier's labor relations representative during conference. Each statement repeats the wording in the claim; one statement also includes handwriting but the handwriting is different from the handwritten signature on the statement. Nevertheless, the Carrier does not deny the Organization's position that the statements were shared and discussed at conference. Although the Carrier stated in its claim denial that the Organization has "not provided any additional statements for review," 8 statements are sufficient because additional statements restating the allegation in the claim would be cumulative evidence but not necessarily probative evidence. The 8 statements are credited as presented.

Also credited as presented is the Division Engineer's statement that employees in the Engineering Department worked alongside T&E Department employees with the former (Engineering) picking up track material and the later (T&E) picking up trash and garbage.

When comparing the Division Engineer's statement with the Organization's statements, there is a mutually expressed understanding between them that T&E Department employees did pick up trash. The dispositive finding to be rendered by the Board, however, is whether T&E Department employees also performed the claimed work (Organization) or did not perform the claimed work (Carrier). In this appellate forum, the Board is without recourse to examine those providing the statements as a means to resolve this factual stalemate. In the circumstances of this claim, the finding dispositive to this claim cannot be established on the basis of this record. Thus, the claim will be denied based on insufficient evidence to prove the alleged violations.

Award

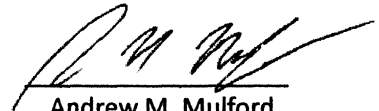
Claim denied.



Patrick Halter
Neutral Member



Rob Miller
Carrier Member



Andrew M. Mulford
Organization Member

Signed on this 28th day
of January, 2016