

AWARD NO. 179

Case No. 179

Organization File No. I61700113

Carrier File No. 2012-137840

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 CSXT inappropriately assigned Car Shop employees to perform Maintenance of Way work (clearing cart paths and associated duties) on December 26 and 29, 2012 at Mile Post OKC110, Cincinnati, Ohio on the Louisville Division and failed to offer or assign Claimants M. Collins, S. Kissel and D. Bolser.
2. As a consequence of the violation referred to in Part 1 above, Claimants M. Collins, S. Kissel and D. Bolser shall each now be allowed sixteen (16) hours straight time and four (4) hours overtime at their respective 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, on the dates of claim, assigned Car Shop employees to perform snow removal work in the vicinity of the Car Shop at Cincinnati, Ohio. It is also not disputed that this work was performed on a paved path upon which employees drive motorized carts

around the shop. The Carrier explains that this path is limited to the shop area, although it is sometimes parallel to track. The Organization argues that snow removal is work that is reserved to Maintenance of Way employees under the Scope Rule. In listing the work that is reserved to the craft, the Rule includes "snow removal (track structures and right of way)." It further includes "maintenance and any other work customarily or traditionally performed by BMW represented employees."

With regard to the specific reference to "snow removal," the Board finds that this question was resolved by Award No. 6 of Public Law Board No. 6510 (Ref. Goldstein), which held:

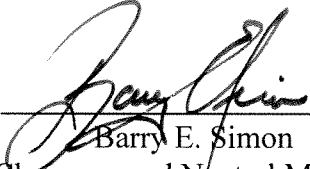
The majority of the Board further notes that the Organization has failed in its higher burden of showing that snow removal for parking lots, roadways or areas adjacent to buildings in yards is the precise types of work covered by the express term "snow removal (track structures and right of way)." As the Carrier has argues, the Organization reads the two words "snow removal" as if the parenthetical phrase "(track structures and right of way)" does not exist in this Scope Rule, or at least as of this phrase is not intended to be read as a limitation on the type of snow removal intended to be reserved to the employees represented by it under Paragraph 2. Such a reading makes no sense. The normal reading of this entire phrase must be that the only snow removal expressly reserved by paragraph 2 to BMW represented employees is snow removal from track structures and right of way, the majority holds. It certainly can be inferred that not all snow removal, then, is scope-covered, unless the Organization shoulders its burden of proving that other parts of paragraph 2 place the disputed work within the Scope Rule, the majority also specifically holds.

The Board first finds that the work in question in this case was exclusively in the vicinity of the Car Shop and not on track structures or right of way. The above-cited Award is governing. Therefore, the Organization now has the burden of showing that this is work which has been customarily and traditionally performed by BMW represented employees. To that end, the Organization has submitted statements from employees attesting that they have performed snow removal. These statements, though, are general in nature and not specific to the Car Shop area. Consequently, it is the Board's conclusion that the Organization has failed to meet its burden of

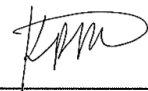
proof in showing that there has been an exclusive practice of covered employees performing this work at this location.

In reaching this conclusion, we are not persuaded by Award No. 11 of this Board, which involved shoveling snow from the steps and walkways on the humps at Willard Terminal. In that case, the Board relied upon Third Division Awards 39138, 39139 and 39140, which sustained the Organization's claims based upon documentation showing that snow removal work in particular areas other than track structures or right of way had customarily and traditionally been performed by BMW members. Presumably, such evidence was in the record to support the Organization's claim in Award No. 11. In the absence of such proof in this case, we cannot find a violation of the Scope Rule.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Andrew Mulford
Employee Member


Rob Miller
Carrier Member

Dated: January 27, 2016
Arlington Heights, Illinois