

AWARD NO. 209
Case No. 209

Organization File No. G31806413
Carrier File No. 2013-143150

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, commencing February 11, 2013 and continuing, the Carrier assigned Track Department employee T. Sexton to perform Bridge and Building (B&B) Department work of flagging for outside contractor DLB as it performed B&B Department work of installing pipes under the right of way near Mile Post CA 289.8 on the Clifton Forge Seniority District.
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Kimberlin shall be “. . . receive the same amount of hours expended by Machine Operator T. Sexton, beginning February 11, 2013 and continuing until this violation stops, at his appropriate rates of pay in effect during the period claimed.”

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 on the basis that a contractor was performing jack and bore work and the Carrier had utilized a flagman from the Track Department to provide protection. The Organization asserts the work performed by the contractor was of the nature regularly performed by

employees of the Bridge and Building (B&B) Department. Consequently, it claims the flagging work should have been performed by a B&B employee.

The Carrier responded to the claim by explaining that the work performed by the contractor involved jacking under the track to install sewer lines. Although the sewer lines were under the track, they were not installed for the benefit of the Carrier. Because of the nature of the work being performed, the Carrier takes the position that flagging was necessary to protect the integrity of the track while the outside party was running its sewer line under it. The Carrier additionally asserts that the work performed by the contractor has never been performed by any Carrier employees. As a result, it argues that the work is not covered by the Scope Rule of the Agreement.

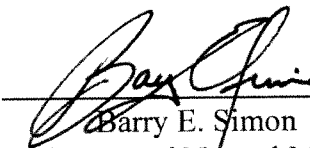
The relevant rules in this case are Section 8.A.1 and 2 of the parties' May 9, 2007 Memorandum of Agreement, dealing with flagging work. It states:


1. When flagging work is required in connection with Track Department work or other work that holds the potential to undermine the integrity of the roadbed or track structure, an Assistant Foreman - Flagman from the Track Department shall be assigned in accordance with Rule 3, Section 3 or 4, as applicable.
2. When flagging work is required in connection with B&B Department work or other work that holds the potential to undermine the integrity of structures such as bridges or buildings as Assistant Foreman - Flagman from the B&B Department shall be assigned in accordance with Rule 3, Section 3 or 4, as applicable.


The gravamen of the Organization's claim is that the work performed by the contractor was reserved to employees in the B&B Department, which then required the flagging to be performed by a B&B Assistant Foreman. The argument is built upon a false premise. The Organization cites Section 6 of the September 1, 2009 Memorandum of Agreement which proclaims, "All culvert installation, repair and maintenance work shall be performed by BMWED-represented forces and shall not be contracted out except as expressly stipulated in Paragraphs B and C below." A culvert,

by definition, is a "tunnel carrying a stream or open drain under a road or railway."¹ This sewer line did not fit the definition of a culvert. Furthermore, there is no evidence that the Carrier went through the procedures required by the Memorandum of Agreement in order to allow this work to be performed by a contractor. Because this was not a culvert, there is no support for the Organization's argument that the work of installing the sewer line was reserved to the B&B forces. Consequently, there is also no support for the Organization's contention that flagging was to be performed by a B&B employee. The Board accepts the Carrier's assertion that the flagging was performed to protect the integrity of the right of way. Accordingly, we cannot find that the Agreement was violated.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Andrew Mulford
Employee Member


Rob Miller
Carrier Member

Dated: 10/19/16
Arlington Heights, Illinois

¹*The New Oxford American Dictionary* (Oxford University Press, 2001).