

AWARD NO. 221

Case No. 221

Organization File No. SelkirkShopC.013

Carrier File No. 2013-145655

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, on April 12, 2013, the Carrier assigned Car Shop employees to perform Maintenance of Way Bridge and Building (B&B) Department work of cleaning and painting the floor and walkways of the Selkirk Car Shop.
2. As a consequence of the violation referred to in Part 1 above, Claimants F. Kovits, D. Cook, W. Montag, W. Mihuka, R. Walsh, G. Walsworth, R. Ickes, B. Coyle, G. Olin, J. Dewe, J. Jackson, K. Dickinson and J. Mathews shall each be compensated for eight (8) hours' pay at their respective rates of pay.

FINDINGS:

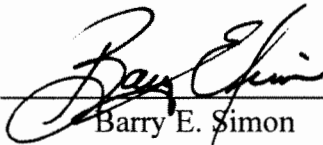
The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

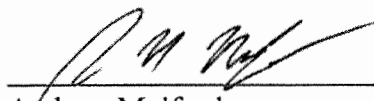
It is undisputed that the Carrier utilized Mechanical Department employees to clean and paint the floor and walkways at the Selkirk Car Shop. The Carrier also does not dispute that this work is generally reserved to B&B employees under the Agreement. However, the Carrier has provided an email from a manager at the Selkirk facility stating that B&B employees have never done this work

at Selkirk. He asserted "the Carmen have painted the floor and their work areas since they've had paint on them." The Organization has offered nothing to refute this statement.

As we noted in Award No. 216, the Carrier may utilize employees not covered by the Agreement to perform work that is within the scope of the Agreement if, at that location, such employees performed that work prior to June 1, 1999. We are satisfied the Carrier has met its burden of proof in this case. Accordingly, we do not 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

LABOR MEMBER'S DISSENT
TO
AWARDS 221, 222 AND 223 OF PUBLIC LAW BOARD NO. 7163
(Referee Barry Simon)

The Majority seriously erred when it determined that the Carrier's assignment of Car Shop craft employees to clean and paint Carrier buildings did not violate the Agreement. As the violation is clear, a dissent is required for this palpably erroneous award.

On various dates and at various locations, the Carrier assigned Car Shop employees to perform Maintenance of Way work (i.e., the cleaning and painting of Carrier buildings and associated property). This work is unequivocally Maintenance of Way work by virtue of the clear language of the Scope Rule. In this manner, the pertinent part of the Scope Rule, reads:

“SCOPE

These rules shall be the agreement between CSX Transportation, Inc., and its employees of the classifications herein set forth represented by the Brotherhood of Maintenance of Way Employees, engaged in work recognized as Maintenance of Way work, such as inspection, construction, dismantling, demolition, repair and maintenance of water facilities, bridges, culverts, buildings and other structures, tracks, fences, road crossings, and roadbed, and work which as of the effective date of this Agreement was being performed by these employees, and shall govern the rates of pay, rules and working conditions of such employees.

The following work is reserved to BMW members: all work in connection with the construction, maintenance, repair, inspection or dismantling of tracks, bridges, 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. This work will include rail, guard rail, switch stand, switch point, frog, tie, plate, spike, anchor, joint, gauge rod, derail and bolt installation and removal; erection and maintenance of signs, such as mile posts, speed restriction signs, resume speed signs, crossing and station signs, warning signs, and signs attached to buildings or other structures (except billboards); construction of track panels; welding, grinding, burning, and cutting; ballast unloading, regulating, equalizing, and stabilizing; track and switch undercutting; cribbing between ties; track surfacing and lining; snow removal (track structures and right of way); road crossing installation and renewal work; asphaltting of road crossings (unless required by outside agencies), culvert installation, repairs, cleaning and removal; yard cleaning; security and ornamental fences; distribution and collection of new and used track, bridge and building material; operate machines, equipment, and vehicles; transporting maintenance of way employees;

“mowing; installation, maintenance, and repairs of turntables, platforms, walkways, and handrails; head wall and retaining wall erection; **cleaning, sandblasting, and painting of machines, equipment, bridges, turntables, platforms, walkways, handrails, buildings, and other structures or facilities; rough and finish carpentry work; concrete and masonry work;** grouting, plumbing, and drainage system installation, maintenance, and repair work; cooling and heating system installation, maintenance, and repair work; fuel and water service work; roof installation, repairs, and removal; drawbridge operation and maintenance **and any other work customarily or traditionally performed by BMW represented employees.** In the application of this Rule, it is understood that such provisions are not intended to infringe upon the work rights of another craft as established. **It is also understood that this list is not exhaustive.”**

As identified above, the cleaning and painting of Carrier buildings and associated property is **undeniably and specifically** reserved to Maintenance of Way forces.

In addition to the clear reservation of work, the record is undisputed that Maintenance of Way forces have historically and customarily performed such work across the Carrier's rail network as well as on the former component railroads which now comprise the Carrier. During the on-property handling, the Carrier did not dispute the reservation of work or historical performance by Maintenance of Way forces. Based on this alone, it should have been crystal clear that the Carrier's assignment of Car Shop employees to perform the subject work constituted a violation of the clear language of the Scope Rule. However, the Majority failed to follow the clear language and customary and traditional performance by Maintenance of Way forces and instead errantly held that the Carrier properly assigned Car Shop employees based on specious assertions. However, the record simply does not establish Car Shop employees had a **bona fide past practice of performing the subject work at subject locations prior to the Maintenance of Way (Effective June 1, 1999), or, that there was agreement with the Organization for Car Shop employees to perform such work which was in effect prior to the effective date of the Maintenance of Way Agreement.** The Carrier's failure to establish such is paramount, considering the Scope Rule plainly provides:

“It is agreed that in the application of this Scope that any work which is being performed on the property of any former component railroad by employees other than employees covered by this Agreement 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....”

Labor Member's Dissent

Awards 221, 222 and 223 of Public Law Board No. 7163

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In light of the Majority's palpably erroneous decision, the Organization respectfully dissents.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'AM' or 'Mulford', written in a cursive style.

Andrew M. Mulford
Labor Member

CARRIER MEMBERS' RESPONSE TO ORGANIZATION'S DISSENT
TO
AWARD 221 and 222 OF PUBLIC LAW BOARD NO. 7163
(Referee Barry Simon)

In response to the dissent of the Organization where Maintenance of Way employees filed claims against Car Shop craft employees who performed the work of cleaning and painting floors in the Selkirk, NY car shop. The Organization asserts that the Carrier did not dispute the reservation of work or historical performance by Maintenance of Way forces in the on property handling. This statement is factually incorrect.

The facts were clearly stated in the on property handling that the Mechanical Department Car Shop employees have always painted the shop floors. In fact, the Selkirk mechanical manager included a statement saying the BMW has NEVER performed this work at his location. In order to maintain the integrity of the safety of the shop, an "intricate pattern has to be followed" when painting the floor. Therefore, it is the practice and customary for Selkirk Car Shop employees to safety paint the floors in the shop at this location.

While the Scope Rule of the June 1, 1999 Agreement describes the scope of Maintenance of Way employees, the Scope Rule excludes work previously performed by other crafts. The Scope Rule states:

It is agreed that in the application of this Scope that any work which is being performed on the property of any former component railroad by employees other than employees covered by this Agreement 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; (emphasis added)

As such, other crafts may continue to perform work covered by the Scope rule of the June 1, 1999 Agreement if they performed the work prior to the effective date of the Agreement. Mechanical department employees at the Selkirk Car Shop have historically performed the painting of floors within the car shop for many years as supported by a statement from the Selkirk Mechanical Department Manager.

The Organization failed to refute the Carrier's position that the painting work at this location was historically performed within their own shop. This demonstrates without a doubt that the Carrier did not agree that this work was reserved for Maintenance of Way forces. Therefore, the mechanical craft retains the right to perform that work.

The Majority did follow the clear language of the Scope Rule, looked at the facts and the statements supporting the Carrier when ruling that other crafts do continue to perform work they have a historical past practice of performing based on a location by location basis. The Organization did not produce evidence or refute the fact that mechanical employees perform this work as a practice.

In light of the inaccuracies in the Organization's dissent, the Carrier's response is to preserve the facts of record.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'R. Miller', written over a horizontal line.

Rob Miller
Director, Labor Relations