

AWARD NO. 223

Case No. 223

Organization File No. BuffCarShopC.013

Carrier File No. 2013-148014

**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 June 8, 10, 11, 12, 13 and 17, 2013, the Carrier assigned Car Shop employees to perform Maintenance of Way work such as the installation/maintenance/repair of walkways, safety warning signs and scrap dumpsters at the Buffalo New York Car Shop in Frontier Yard and failed to offer or assign such to Maintenance of Way forces, including Claimants D. Kurek and N. Grzybowski.
2.     As a consequence of the violation referred to in Part 1 above, Claimants D. Kurek and N. Grzybowski shall be compensated for all hours worked by Car Shop employees P. Wexlman and C. Chiappipa.

**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.

On various dates in June 2013, the Carrier utilized Carmen working in the Buffalo Car Shop to paint yellow safety lines and red warning areas on the floor of the Shop. Additionally, they painted scrap bins with green paint. According to the Carrier, all of this work was performed within


the Shop. The Organization claims this work should have been assigned to B&B employees working under the Agreement.

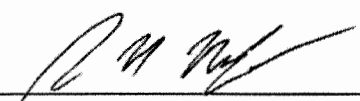
The Carrier does not deny that the work performed by the Carmen is generally work reserved to B&B employees. It contends, however, that Carmen have historically performed this work at this facility. When B&B employees are used to paint walkways and lines in the roadway, the Carrier says such work takes place outside of the Shop.


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. Although the Organization has submitted statements from B&B employees who assert they have performed this work, the Board notes that they cover different locations. In any case, it is not necessary, under the Agreement, for non-Agreement employees to have performed the work exclusively. Even if covered employees have done the work from time to time, non-Agreement employees at a particular location may continue to perform the work if they performed it at the location prior to June 1, 1999.

Based upon the record before us, we are satisfied that the Carrier has met its burden of proving that the subject work is not exclusively reserved to B&B employees within the confines of the Buffalo Car Shop. 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 black ink, appearing to read 'AM', is positioned above the printed name.

Andrew M. Mulford  
Labor Member

CARRIER MEMBERS' RESPONSE TO ORGANIZATION'S DISSENT  
TO  
AWARD 223 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 Buffalo, NY car shop along with painting safety warning signs and scrap dumpsters. 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, two Buffalo Mechanical Managers included statements supporting this statement and that Carmen are responsible for the upkeep and cleaning of their own areas and that this work was not historically performed by the B&B employees. He further added the Carmen's performance of this work is the standard on the Albany Division. Therefore, it is the practice and customary for Buffalo 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 Buffalo Car Shop have historically performed the

painting of floors within the car shop for many years as supported by a statement from the Buffalo Mechanical Department Managers.

The Organization failed to refute the Carrier's position that the painting work at this location was historically performed within their own shop. Statements provided by the Organization were for different locations and did not include Buffalo. 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 this 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 read 'Rob Miller', written over a horizontal line.

Rob Miller  
Director, Labor Relations