

AWARD NO. 275
Case No. 275

Organization File No. I61714413
Carrier File No. 2014-155906

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 November 18, 19 and 20, 2013, the Carrier assigned Transportation Department employees to perform Track Department work of painting switch stands and switch points at Mile Post BE 3.5 on the Louisville Division (System File I61714413/2014-155906 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimants S. Hoover, A. Alexander, J. Fightmaster and T. Brown shall now be allowed an equal share of one hundred and twenty (120) hours straight time 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.

The central facts in this case are not in dispute. The Carrier utilized train and engine service employees to apply reflective paint to switch points and switch stands, and the Organization contends that this is work reserved to the maintenance of way craft. According to the Carrier, this

work was performed to make the switch points and switch stands more visible to train crews, thereby contributing to the safety of their work. The Carrier has argued:

The primary function and character of the work is not to maintain, repair, construct, inspect, demolish or dismantle the switch point or switch stand. While the purpose of painting may on occasion be for maintaining equipment or facilities, this is not the case, here. Switch points and stands do not require maintenance painting, nor ornamental painting for that matter. Coating switch points and stands with reflective material serves to assist with visibility. The sole purpose of the disputed work was to protect employees and equipment and avoid incidents and injuries. The Scope Rule requires the work to be connected with the maintenance or repair of the switch points and stands.

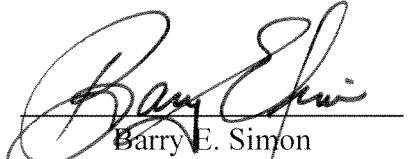
The Carrier explains that this is new work that had not been previously performed by track department employees. In denying that the work is covered by the Scope Rule, the Carrier argues it could be performed by any employee.

The Scope Rule defines the work that is reserved to maintenance of way employees; it does not consider the purpose of the work. Much of the work performed by maintenance of way employees, as well as employees in other crafts, is for the safety of train and engine service employees. Maintenance of way employees repair broken rails and ensure that the track is in gauge. This prevents derailments that could imperil employees and equipment. Signal employees replace lenses and bulbs in track signals, ensuring that engineers are aware of the safe speed for the operation of their trains. Carmen repair brake systems, enabling engineers to stop their trains in a safe manner. Train and engine service employees would not be entitled to perform these duties, despite their interest in having the work done.

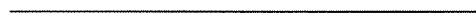
In practice, track maintenance is not limited to maintaining the status quo; it may also involve upgrades and improvements to the track system. The Board finds that applying paint or other such markings to track, switches or switch stands is encompassed in the maintenance of such structures

and equipment, and is thereby covered by the Scope Rule. The performance of such work by persons not covered by the Agreement is not permitted. Claimants are entitled to be compensated for the time expended by non-covered employees in the performance of this work. Following the remedies granted in Third Division Awards 30160 and 30161, involving these parties, we will direct that Claimants be made whole for the lost work opportunity by requiring that they be compensated for a reasonable amount of time attributable to the train and engine service employees' performance of the work on the dates set forth in the claim as determined by the parties.

AWARD: Claim sustained in accordance with the above Findings. Carrier is directed to comply with this Award within 45 days.


Barry E. Simon
Chairman and Neutral Member


Andrew Mulford
Employee Member


Katrina Donovan
Carrier Member

Dated: _____
Arlington Heights, Illinois

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TO THE) INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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DISPUTE) CSX TRANSPORTATION, INC.

**CARRIER'S DISSENT FROM
PLB 7163, AWARD 275**

The Carrier respectfully and strongly dissents to this decision. The error of the Majority's findings is best demonstrated by clear and unambiguous language of the Agreement. The first unnumbered paragraph of the Scope Rule states:

"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." (**Emphasis** added).

This language clearly defines Maintenance of Way work. The second unnumbered paragraph of the Scope Rule further reinforces this definition:

The following work is reserved to BMWE 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. (**Emphasis** added).

The unambiguous language of the Scope Rule clearly shows that, as a threshold matter, in order for claimed work to be within the scope of Maintenance of Way employees, the work at issue must be maintenance. This is supported by Neutral Douglas's interpretation of the Scope Rule where he stated in on-property award Special Board of Adjustment 1110, Award 53:

"In the absence of any maintenance work, the Carrier did not violate the applicable Scope Rule, which covers maintenance work, by having the disputed work performed by outside forces." (*Emphasis added*).

This basic principle is further illustrated in on-property award NRAB Third Division, Award 39279 where Neutral Klein stated:

*"While the Organization correctly points out that the Scope Rule states that the work of operating machines, equipment and vehicles is reserved to BMW members, the Board notes that **the Scope Rule also requires that said work must be performed 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." NRAB Third Division, Award 39279 (Klein) (**Emphasis added**).*

Notwithstanding the above, the Majority's award in this matter fails to cite, or even tangentially reference, the applicable provision of the Scope Rule pertaining to "painting", which should be the determinative test of the outcome of this dispute. Specifically, the Scope Rule considers "*the painting of machines, equipment, bridges, turntables, platforms, walkways, handrails, buildings, and other structures or facilities*" to be BMW scope-protected work. There can be no debate that a switch or switch stand cannot be considered reasonably related to any of the enumerated items in the list above pertaining to painting. As such, the work in question fails to meet the standard for determining whether the work is scope-protected

Further, the record establishes that the reflective paint was not applied for any other purpose but safety. The application of paint in the manner under dispute does not repair a defect in the switch stand/point, nor does it enhance the usage or extend the life of said fixture. As such, it strains logic how such work can be classified as involving "upgrades and improvements to the track system" as

referenced by the Majority in this award. Prior to this, switch stands and switch points had never been painted and do not require painting for maintenance or repair and would never had been painted but for the safety reasons stated on the record. Simply put, no maintenance work took place as required by the Scope Rule. This is completely distinguishable from the examples given by the Majority where the purpose and character of the work described is maintenance.

Finally, the Majority gravely erred when it stated the Scope Rule does not consider the purpose of the work. For instance, there is no dispute that both Maintenance of Way and Signal employees use a backhoe to perform varied scope-protected work within their own respective crafts. If the purpose of the work was not an appropriate litmus test for determining scope protection, then the use of a backhoe, for instance, could be claimed by any craft, regardless of the intended use of that equipment. For example, a Signal employee might utilize a backhoe to dig a foundation for installation of an overhead signal bridge, which would be considered scope-protected under the BRS agreement. However, such work would not accrue to BMW employees because the work doesn't involve the "construction, maintenance, repair, inspection, or dismantling of tracks, bridges, buildings, and other structures or facilities."

Consequently, the Majority's findings are palpably erroneous and holds no precedential value.

Respectfully Submitted,



Katrina Donovan
Manager Labor Relations
Carrier Member