

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 7163

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| Brotherhood of Maintenance of Way |) | |
| |) | |
| Employees Division, IBT Rail Conference |) | Case No. 292 |
| |) | Award No. 292 |
| and |) | |
| |) | |
| CSX Transportation, Inc. |) | |

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when, on February 12, 13, 14, 15 and 16, 2014, the Carrier assigned supervisory employees to perform Maintenance of Way work (crossing watchman duties and right of way fence installation) at a road crossing located at Mile Post SP 678.16 on the Jacksonville Division (System File B16904114/2014-164129 CSX).
2. As a consequence of the violation referred to in Part 1 above,

Claimant M. Rine shall now be ‘...compensated for Sixteen (16) Hours
Straight Time, Sixty (60) Hours Overtime, and Twenty-four (24) Hours
Double time, at his respective rates of pay, and that all time be credited
towards vacation and retirement.’ (Employees Exhibit ‘A-1’).”

FINDINGS:

The Organization alleges that the Carrier assigned Supervisory employees to perform Maintenance of Way duties on February 12, 13, 14, 15 and 16, 2014. That the record reflects the Carrier violated the Claimant’s seniority rights when it assigned two (2) Trainmasters to serve as Crossing Watchmen protecting a road crossing which by agreement is work that’s rightfully been assigned to the Claimant under the Controlling Agreement’s Scope Rule. In addition, the work of repair of right of way fencing also accrues to BMW per MOA #3, Section 6. The claim should be sustained in its entirety.


The Carrier responds initially that the Organization failed to show the Carrier violated any rules or agreements, in addition the Organization failed to fulfill its

burden of proof. The work claimed did not take place. The claim should be denied in its entirety.

The Board has carefully reviewed the record before us and discovered no fatal procedural errors. The Organization has built the majority of their case on circumstantial evidence. The Board notes that the record does not support the claim of fencing work. In this instance, based on the record before us, the Organization has failed to substantiate their burden of proof. The claim will be denied.

AWARD:

Case denied.



Don A. Hampton
Neutral Chairman and Referee



Katrina Donovan
Carrier Member



Andrew M. Mulford
Employee Member

DATED: July 13, 2018