

AWARD NO. 466  
Case No. 466

Carrier File: 19-38442  
BMWE File: FLO801619

**PUBLIC LAW BOARD NO. 7163**

PARTIES     ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,  
              )       IBT RAIL CONFERENCE  
TO            )  
              )  
DISPUTE     ) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1.     The Agreement was violated when, on January 14, 2019 and continuing through February 14, 2019, the Carrier assigned Assistant Roadmaster J. Sanders to perform Maintenance of Way work [flagging and Employee in Charge (EIC) duties] via EC-1 limits on the siding tracks near and or between Mile Posts AK 553.0 and 591.7 (System File FLO80169/19-38442 CSX).
2.     As a consequence of the violation referred to in Part 1 above, Claimant W. Heath shall now be compensated for '... five-hundred-twelve (512.0) hours at the overtime rate and two-hundred-fifty-six (256.0) hours of pay at the double-time rate of pay of the Assistant Track Foreman-Flagman position and that all time be credited towards vacation and retirement \*\*\*"

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.

Claimant, W. Heath, was, at the time of this dispute, employed as an assistant track foreman-flagman. The Organization contends that on January 14, 2019 and continuing through February 14, 2019, the Carrier assigned flagging, Maintenance of Way work, to a non-Agreement

supervisor, Assistant Roadmaster J. Sanders. The Organization contends that Claimant had an Agreement right to the flagging/foreman work involved herein, was qualified and able to perform the work, and would have done so had the Carrier afforded him the opportunity.

Here, on the dates at issue, management assigned Mr. Sanders to hold an EC-1 authority on the track overnight, to protect standing equipment. No one was in fact present during that time. On the property, the Organization advanced this claim by categorizing this work as “flagging” within the meaning of Section 8. Therefore, the Organization contends that the work was reserved to the Track Department Assistant Foreman-Flagman and should not have been assigned to a supervisor.

Whether the Organization member is entitled to this work is governed by Section 8 of the parties’ 2007 Memorandum of Agreement (MOA 1). It provides, in relevant part:

- A.
  - 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.
- B. In the application of this Section 8, it is understood that: . . . The purpose of this Section 8 is to ensure that flagging work will not be contracted out and that Track and B & B Department employees shall provide flagging protection for their own work and for outside forces (utility companies, contractors, municipal workers, etc.) engaged in work on or near the right-of-way that has the potential to undermine the integrity of the roadbed, track, bridges or other railroad structures.

The Carrier argues that the work performed by Mr. Sanders was not flagging within the meaning of MOA 1. However, even if it were, the Carrier states, it determined that there was no potential to undermine the integrity of the track.

The burden was on the Organization to prove otherwise. Claimant, in a written statement, acknowledged that the work involved protecting equipment and trains, and the Organization offered broad speculation that equipment could roll out of position, possibly causing a derailment or improperly handled switches which could then possibly damage track integrity. On this record, the Organization has failed to rebut the Carrier's determination that there was no potential to damage track integrity. See Award No. 108 of this Board (Zausner, 2012); see also Third Division Award Nos. 44040, 44047 and 44058 (Van Dagens, 2020), between these parties. The claim will therefore be denied.

AWARD: Claim denied.

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Jacalyn J. Zimmerman  
Neutral Member

A stylized, handwritten signature in black ink, reading "Ross Glorioso", written in a cursive script.

Ross Glorioso  
Employee Member

A stylized, handwritten signature in black ink, reading "John Nilon", written in a cursive script.

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John Nilon  
Carrier Member

Dated: 8/16/2022