

AWARD NO. 467
Case No. 467

Carrier File: 19-40668
BMWE File: FLO801719

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 February 20, 2019, February 21, 2019, February 25, 2019, February 26, 2019, March 7, 2019 and March 8, 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 tracks near and or between Mile Post C 40.2 and Mile Post C 74.0 on the Florence-Savannah Seniority District (System File FLO801719/19-40668 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant W. Heath shall now be compensated for '... seventy-two (72.0) hours of overtime at the overtime rate of pay of the Assistant 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 February 20, 2019, February 21, 2019, February 25, 2019, February 26, 2019, March 7, 2019, and March 8, 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 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.

A stylized, handwritten signature in black ink, reading "Jacalyn J. Zimmerman", enclosed within a white rectangular box with rounded corners and a subtle drop shadow.

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.

John Nilon
Carrier Member

Dated: 8/16/2022