

**PUBLIC LAW BOARD NO. 7163**

**BROTHERHOOD OF MAINTENANCE  
OF WAY EMPLOYEES  
DIVISION - IBT RAIL CONFERENCE**

**vs.**

**CSX TRANSPORTATION, INC.**

**Case No. 469  
Award No. 469  
Organization No. L65706118  
Carrier No. 18-39822**

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**STATEMENT OF CLAIM**

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned Signal Construction employees to perform Maintenance of Way work installing cross ties and gauge plates between Mile Posts BC1.9 and BC6.7 in Cincinnati, Ohio on the Louisville Division beginning on October 16, 2018 and continuing (System File L65706118/18-39822 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimants P. McConnell, T Abbot, J. Gibson and B. Baker shall now be compensated for ‘... all man hours (straight time and overtime), made by the Signal employees, beginning on October 16, 2018, and continuing until the violation stops, at their respective straight and overtime rates of pay.’ (Employees’ Exhibit ‘A-1’).”

**JURISDICTION**

The Board upon consideration of the entire record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over this dispute; that the parties were given due notice of hearing.

**FINDINGS**

The Claimants referenced above have established and hold seniority on the Louisville Division in the Maintenance of Way Department.

This claim is based on the proper application of the Scope Rule, Rules 1, 3, and 4 of the Agreement between the parties effective June 1, 1999. The Scope provision describes the work engaged in by Maintenance of Way Employees. It states, in pertinent part, that

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....

Rule 1 describes the seniority classes. Rule 3 governs the selection of positions and Rule 4 sets forth how seniority is determined.

At issue is whether the Carrier violated the Agreement when it allegedly assigned Carrier Signal Construction employees to install cross ties and gauge plates between mileposts BC1.9 and BC6.7, Cincinnati, OH on the Louisville Division.

Claimant McConnell reported to the Organization by email that “Starting October 16-23 a signal gang which included 78G2 performed maintenance of way work, which included replacing ties, gauge plates, connecting rods and tamping on the Cincinnati terminal between m.p.b.c. 1.5-6.7 switches which included the Texaco crossover, the E&D crossover, consolidated grain, & CW cabin.” (Attachment No. 1 to Employees’ Exhibit A-2). A second statement was submitted by Maintenance of Way employee Bryan Baker stating, “October 16 thru 23 and Nov 18 thru 24 a Signal Gang and 78G2 performed Maintenance of Way work of replacing ties, connecting rods, gauge plates, tamping on Cincinnati Terminal. This is work that that (sic) I always do on a Section Gang in Cincinnati. The total hours that they had worked on these projects is 366 hours.” (Attachment No. 2 to Employees’ Exhibit A-2).

By letter dated October 31, 2018, the Organization filed a timely claim on behalf of the Claimants contesting the work assignment. In response to the claim, the Carrier asserted that it was unable to “come up with any evidence that the work being claimed by the Organization actually took place.” Further, Director Regional Signal Construction Timothy Smith provided a statement that “at no time [were] Signal Construction employees out in the field replacing ties.” (Carrier’s Exhibit B, pg. 6-7).


The claim was properly handled by the Parties at all stages of the appeal up to and including the Carrier's highest appellate officer. The matter was not resolved and is now before this Board for resolution.


In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. As the moving party, it was the Organization's responsibility to meet its burden to prove by a preponderance of evidence that the Carrier committed the alleged violation(s). After careful review of the record, the Board finds the Organization has not met its burden.

The Carrier denies that the claimed work was performed. While the Organization provided statements from its members, there remains an irreconcilable conflict in fact. Arbitral precedent, including awards on property, hold that if an irreconcilable conflict in fact exists, the claim should be denied or dismissed. NRAB Third Division, Award 39027 (Wallin) (CSXT v. BMW); NRAB Third Division, Award 44043 (VanDagens) (CSXT v. BMW); NRAB Third Division, Award 39851 (Bierig) (CSXT v. BMW); NRAB Third Division, Award 42182 (Knapp); NRAB Third Division, Award 28435 (Lieberman) (denying claim based on irreconcilable facts where Organization alleged work occurred and Carrier responded that it did not); NRAB Third Division, Award 28794 (Stallworth) (dismissing claim based on irreconcilable facts where Organization alleged track supervisor performed scope covered work and where Carrier denied same); NRAB Third Division, Award 36071 (Kenis). In accordance with this precedent, the claim is denied.

**AWARD**

Claim denied.

  
Jeanne Charles  
Chairman and Neutral Member

  
John Nilon  
Carrier Member

  
Ross Glorioso  
Labor Member

Dated: 1/18/2022