

PUBLIC LAW BOARD NO. 7104

BROTHERHOOD OF)	
MAINTENANCE OF WAY EMPLOYEES)	
DIVISION – IBT RAIL CONFERENCE)	
)	CASE NO. 4
vs.)	AWARD NO. 4
)	
CSX TRANSPORTATION, INC.)	

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement when it assigned Track Department employees G. Rader, C. Sparks and N. Rudd to perform B & B Department work (Install culverts and repair water lines) at Mile Post OW 92.7 on the Eastern Kentucky Seniority District on July 23 and 24, 2001, instead of B & B Department employees M. Watts, K. Smith and T. Watts [System File G36703801/12(01-0700 CSX)].**
- 2. As a consequence of the violation referred to in Part (1) above, Claimants M. Watts, K. Smith and T. Watts shall now each be compensated for sixteen (16) hours' pay at their respective straight time rates of pay.**

FINDINGS:

Public Law Board No. 7104, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

The Claimants hold seniority in the Carrier's Bridge and Building Department on the Eastern Kentucky seniority district. The instant claim alleges that on July 23 and 24, 2001, the Carrier assigned three Track Department employees to install culverts and repair water lines. The claim asserted that this work was reserved to Bridge and Building Department employees by the Scope Rule and Rule 1 of the parties' June 1, 1999 Agreement.

In denying the claim, the Carrier asserted that the Agreement had not been violated, contended that the work had been assigned under emergency conditions, disputed certain specifics as to the work and hours involved, and noted that Claimant

Watts was on vacation on one of the claim dates and was not available for duty. In its appeal, the Organization disputed that there had been an emergency which justified Carrier's asserted abrogation of the Agreement.

The Organization asserts that the work in question has customarily and historically been performed by Bridge and Building Department employees and is contractually reserved to them in accordance with the Scope Rule and Rule 1. These rules provide, in pertinent part:

SCOPE

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.

RULE I-SENIORITY CLASSES

The seniority classes and primary duties of each class are:

B & B Department

A. Inspector Roster:

Inspector -Includes Scale, Bridge and Building Inspectors

Inspect scales, bridges, buildings and other structures.

B. Bridge and Building Roster:

1 . B & B Foreman- In charge of Plumbers and B & B Mechanics

Direct employees assigned under his jurisdiction.

2. B & B Assistant Foreman

Direct and work with employees assigned to him under the supervision of a Foreman.

3. B & B Mechanic-Carpenters, Painters, Masons

Construct, repair and maintain bridges, buildings and other structures.

Track Department

A. Inspector Roster:

1 . Track Inspector

Inspect track, roadbed and related track appliances, devices and appurtenances thereto.

2. Assistant Track Inspector

Work with Track Inspector inspecting track, roadbed related track appliances, devices and appurtenances thereto.

B. Track Roster:

1 . Track Foreman

Direct employees assigned under his jurisdiction.

2. Assistant Track Foreman

Direct and work with employees assigned to him under the supervision of a foreman.

3. Trackman

Construct, maintain, repair, inspect and dismantle track and appurtenances thereto.

With respect to the precedent cited by the Carrier, the Organization states that the cases are distinguishable, as they dealt with employees welding or loading scrap into their own cases, where this dispute concerns the installation of culverts and water lines on the main line, which is typically B & B work.

Before this Board, the Carrier asserted that the Organization did not identify any specific contractual language which would indicate that the work at issue was exclusively reserved to B & B Department employees. Absent such language, the Carrier states, it is a basic doctrine of contract interpretation that the Organization bears the burden of showing that a system-wide, exclusive right to such work exists by custom, tradition or

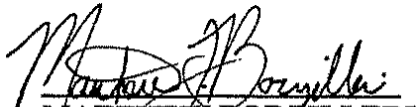
practice. The instant record, the Carrier states is bereft of such evidence. Thus, the Carrier concludes the claim must be denied.

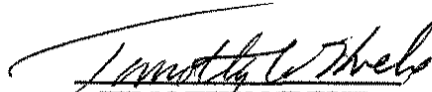
The Board has carefully reviewed the record in its entirety, and concludes that the record is not sufficient to support the claim. In order to prevail, the Organization must demonstrate that only B & B Department employees can perform the disputed work, to the exclusion of any other seniority classification listed in the Agreement. The Organization relies upon Rule 1, but precedent under this Agreement establishes that the language of Rule 1, in its reference to the "primary duties" of each classification, does not secure work exclusively to any seniority classification listed therein. As was held in Third Division Award 37319, involving a similar dispute on this property, "The reference to 'primary duties' in the first sentence of Rule 1 suggests that there is some latitude among classifications that allows employees in one classification to perform work of another classification." The Organization points to no other contract language establishing that the disputed work was intended to be performed by only B & B employees, and, as the Carrier states, there was no evidence presented of a past practice sufficient to establish the right of only B & B employees to perform the work in question. Therefore, the claim must be denied.

AWARD

Claim denied.


JACALYN J. ZIMMERMAN
Neutral Member


MATTHEW BORZILLERI
Carrier Member


TIMOTHY KREKE
Organization Member

Dated this 10th day of October, 2008.

Oct 10, 2008