

**PUBLIC LAW BOARD NO. 7104**

|                                       |   |                    |
|---------------------------------------|---|--------------------|
| <b>BROTHERHOOD OF</b>                 | ) |                    |
| <b>MAINTENANCE OF WAY EMPLOYEES</b>   | ) |                    |
| <b>DIVISION – IBT RAIL CONFERENCE</b> | ) |                    |
|                                       | ) | <b>CASE NO. 6</b>  |
| <b>vs.</b>                            | ) | <b>AWARD NO. 6</b> |
|                                       | ) |                    |
| <b>CSX TRANSPORTATION, INC.</b>       | ) |                    |

**STATEMENT OF CLAIM:**

**Claim of the System Committee of the Brotherhood that:**

- 1. The Carrier violated the Agreement when it assigned Vehicle Operator J. Robbins to perform Welding Department work (torch cut rail being loaded on rail train) between Mile Posts 94.2 and 85.7 near Tullahoma, Tennessee on the S & NA North Seniority District on January 14, 15, 16, 17 and 18, 2002 instead of Welder R. Culbreath and Welder Helper B. Swann, Jr. [System File I59115701/12(02-0329) CSX].**
- 2. The claim as presented by Vice Chairman L.C. Smith on March 6, 2002 to Regional Engineer K.L. Johnson, Jr. shall be allowed as presented because the claim was not disallowed in accordance with Rule 24(a).**
- 3. As a consequence of the violation referred to in Parts (1) and/or (2) above, Claimants R. Culbreath and B. Swann, Jr. shall now “. . . be compensated, at the appropriate rates, for equal proportionate share of forty (40) hours.**

**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.

On March 6, 2002, the Organization filed the instant claim, contending that the Carrier had violated Rules 1 and 3 of the parties' Agreement when, on January 14, 15, 16, 17, and 18, 2002, it utilized Vehicle Operator J.T. Robbins to perform torch cutting of rail. The claim asserted that Mr. Robbins had expended eight hours on this work on each

of the claim dates. The claim further stated that pursuant to Rules 1 and 3 of the parties' Agreement, the work was reserved to employees holding seniority in the Welding Department, and Claimants had a contractual right to the work. The Carrier responded, by letter dated May 6, 2002, that its investigation disclosed the employees were loading and unloading rail, and their use of a torch was incidental to their primary duties. It further stated that using a torch was not primarily Welder work, and could be performed by any qualified employee. In its appeal, the Organization contended that the Carrier had failed to respond to the claim within 60 days, as required by Rule 24(a) of the June 1, 1999 agreement, and the claim should be paid as presented.

The Organization repeats its procedural argument before this Board. On the merits, the Organization contends that it is clear Vehicle Operator Robbins performed welders' work for eight hours on each of the claim dates. The Organization states that Welding Department employees have historically, traditionally and customarily performed such work, and it is clearly reserved to Claimants by the Scope of the parties' Agreement. The Carrier's defense, that any qualified employee can use a torch, lacks merit, the Organization asserts, as rail cutting was Mr. Robbins' primary function for eight hours on the claim dates. That work, the Organization states, is reserved to the welders as the employees who customarily perform such work. The use of the torch herein, the Organization states, was not incidental and related to the vehicle operators' ordinary work, and Mr. Robbins performed that work for his entire work day. Therefore, such work properly accrued to Claimants.

The Carrier first asserts that this claim is barred from consideration because the Organization failed to present it to the Board, as required by Rule 24(c), within the mandatory nine-month period beginning with Carrier's declination letter, and the claim should consequently be dismissed. It also urges the Board to reject the Organization's argument that it failed to timely respond to the claim.

On the merits, the Carrier points out that the historical practice prior to June 1, 1999, was that vehicle operators used cutting torches, and there is no basis to conclude that this practice violates the Agreement. The Organization, the Carrier states, has not shown that Rule 1 includes specific contract language indicating that this work belongs exclusively to welders or welder helpers. Further, the Carrier points out, the specific work at issue, using a cutting torch to cut rail, is not specifically mentioned in the Scope of Agreement, and, therefore, this work is not reserved to Claimants or any other Organization-represented employees. Nor, the Carrier states, has the Organization demonstrated that the work is exclusive to these employees by custom, practice or tradition. Thus, the Carrier concludes, the Organization has failed to meet its burden of proof.

We have carefully reviewed the record in its entirety. First, we find no merit to the procedural argument of either party and conclude that this case is properly before the Board for adjudication. On the merits, we conclude that the record contains insufficient evidence to support the claim in this matter. In order to prevail, the Organization must be able to demonstrate that only Welding Department employees may utilize torches to cut

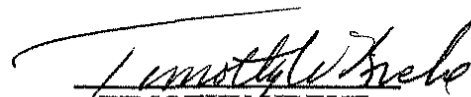
rail. As the Carrier notes, this task is not specifically mentioned in the contract and there is no contract language demonstrating that this work accrues to such employees to the exclusion of other qualified employees. Nor does the record include evidence showing the existence of a substantial, system-wide custom, tradition or practice reserving such work exclusively to Welding Department employees. For these reasons, the claim must be denied.

**AWARD**

**Claim denied.**

  
**JACALYN J. ZIMMERMAN**  
Neutral Member

  
**MATTHEW BORZILLERI**  
Carrier Member

  
**TIMOTHY KREKE**  
Organization Member

Dated this 10<sup>th</sup> day of October, 2008.

Oct. 10, 2008