

Public Law Board 7163

Award No. 11

Parties to the Dispute:

Brotherhood of Maintenance of Way Employees Division

IBT Rail Conference

and

CSX Transportation, Inc.

(D. Shepherd– Claimant)

Statement of Claim: “Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned Yardmaster J. Sell to perform Maintenance of Way work (shovel snow from steps and walkways) in the Willard Terminal on December 26, 2003, instead of Way employe D. Shepherd [System File H42253204/12(04-0427) CSX].

“(2) As a consequence of the violation referred to in Part (1) above, Claimant D. Sheperd shall now be compensated for three (3) hours at his respective time and on-half rate of pay.”

Findings:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934. Public Law Board 7163 has jurisdiction over the parties and the dispute involved herein.

At the time of the incident giving rise to the instant claim, Claimant had established and held seniority in the Track Department and was assigned to the Willard Terminal. On December 26, 2003, Yardmaster Sell performed snow removal work of shoveling snow from the eastbound and westbound hump steps and walkways.

The Organization argues that the Scope Rule was violated when a supervisor performed work reserved to the BMWWE employes. The Organization points to Third Division Awards 39138, 39139 and 39140 in support of the proposition that the snow removal in the instant matter is Scope Rule covered and reserved to BMWWE personnel.

The Carrier counters that the Yardmaster is not a manager, rather he is a UTU member. The Carrier cites Third Division Award 37271 that snow removal around roads and parking lots was a mixed practice, Third Division Award 38021 that snow removal on roads and in parking lots is different from snow removal on track structures, and PLB 6510 Award 6, that parking lots, roads and areas adjacent to building are not track structures within the Scope Rule. Further, there is a mixed practice of various crafts removing snow.

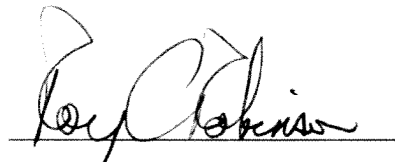
After a review of the record, and the Award citations contained therein, the Board finds that the Organization's citation to Third Division Awards 39138, 39139 and 39140 are controlling. According to the analysis of those precedents, the steps and walkways of the Hump are part of the track structures and right of way. They are not part of the roads and parking lots discussed in the Carrier's submissions.

Award:

Claim granted.

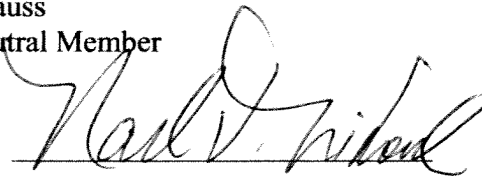


Brian Clauss
Chairman and Neutral Member



Roy Robinson
BMW

Organization Member



James Klimtzak
CSX Transportation, Inc.

Carrier Member

Dated this 3rd day of December 2009