

AWARD NO. 24

Case No. 24

Organization File No. G36652605

Carrier File No. 12 (06-0372)

PUBLIC LAW BOARD NO. 7163

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
)
TO)
)
DISPUTE) CSX TRANSPORTATION COMPANY

STATEMENT OF CLAIM:

(1) The Carrier violated the Agreement when it assigned Track Department employees E. L. Johnson and C. E. Caton to perform B&B Department work (operate trackhoe in removing a bridge) at Mile Post OVB 175.9 on November 7, 8, 9, 10, 14, 21, 22, 28, 29 and 30, 2005, instead of B&B Department Machine Operator K. W. Smith.

(2) As a consequence of the violation referred to in Part (1) above, Claimant K. W. Smith should be allowed one hundred (100) hours straight time at the "A" machine operator's respective straight time rate of pay for the above mentioned dates.

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.

During the period of time covered by this claim, the Carrier utilized B&B Gang 6C78 to remove and replace Bridge #77 at Mile Post OVB 175.9 in the vicinity of Beattyville, Kentucky. This is part of the EK Seniority District. In connection with this task, the Carrier assigned E. L. Johnson, a Machine Operator in the Track Department, to operate a trackhoe to remove scrap

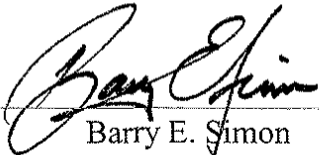
material from the area. The Organization claims this work should have been performed by Claimant, a B&B Department Machine Operator.

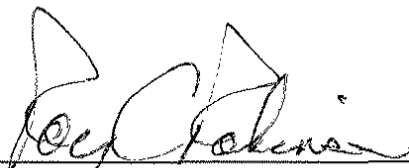
The Carrier has denied this claim on two theories. First, it contends Claimant was not qualified to operate the trackhoe, and relies upon his skill list, a Carrier maintained listing of the equipment on which Claimant is deemed to be qualified. Secondly, it argues that the work performed was properly assigned to a Track Department employee because much the scrap material that was handled was track material that had been taken out at the bridge approaches.

With respect to the Carrier's first point, the Organization has presented a statement from Claimant asserting that he had operated a trackhoe several times. The Organization further disputes the Carrier's assertion that the scrap material included track material. It avers the Carrier has never documented this claim, and it bears the burden of proof inasmuch as this is an affirmative defense on the part of the Carrier.

Upon our review of the record, the Board finds that there is insufficient evidence to support the Organization's assertion that Claimant was qualified for this work. Although he asserts otherwise, Carrier's official record of his work skills does not show that he is qualified to work the trackhoe. In the absence of specific information as to when or where he allegedly operated this machine or credible corroborative evidence, the Board must defer to the official document. There is no indication Claimant ever attempted to have this machine added to his skill list. Accordingly, we conclude that Claimant would not have been the proper person to perform the work had it been given to the B&B Department. In reaching this conclusion, it is not necessary for the Board to determine whether this is work that was exclusively reserved to the B&B Department.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Roy C. Robinson
Employee Member


James T. Klimtzak
Carrier Member

Dated: December 30, 2008
Arlington Heights, Illinois