

PUBLIC LAW BOARD NO. 7163

AWARD NO. 33

CASE NO. 33

Carrier File: 12(06-0975)

BMWE File: G35654206

PARTIES TO
THE DISPUTE:

Brotherhood of Maintenance of Way Employees
Division - IBT Rail Conference
vs.
CSX Transportation, Inc.

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied.

STATEMENT OF CLAIM:

- “1. The Carrier violated the Agreement when it assigned employee T. Foster to perform B&B Department work (operate trackhoe to clean out and install culverts) between Mile Posts CV 175.0 and CV 202.9 and between Mile Posts CV 205.7 and WB 240.0 beginning on April 25, 2006 and continuing instead of B&B Department Machine Operator K. W. Smith [System File G35654206/12(06-0975) CSX].
2. As a consequence of the violation referred to in Part (1) above, Claimant K. W. Smith shall now be ‘... allowed ten (10) hours straight time and all hours time and one half expended by the improper employee beginning April 25, 2006, and continuing, until the violation stops, at the “A” machine operators respective straight time and time and one half rates of pay.’”

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The instant claim represents a work jurisdiction dispute between different seniority classifications within the same overall craft. It is undisputed that employee T. Foster is a Class A Machine Operator in the Track Department. It is further undisputed that the trackhoe in question is normally operated by him for work in and around track. The Organization, however, contends that the claimed work is reserved to the B&B Department. In the Organization’s view, the Carrier’s assignment of Foster to perform it violated Rules 1, 4, and 11 of the Agreement.


Our review of the instant record shows it to be premised entirely on assertions by the Organization that were, point by point, refuted by the Carrier. Given that posture, it was incumbent upon the Organization to provide probative evidence to support each of the requisite elements of

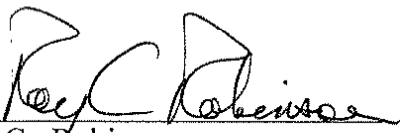
proof necessary to perfect its claim. The record is devoid of such evidence. Indeed, the record does not even establish with certainty what precise work Foster performed. The Organization's assertions in this regard were directly refuted by the Carrier. Moreover, there is no specific language in the rules cited by the Organization that explicitly reserves to the B&B Department all trackhoe operation associated with culvert installation.

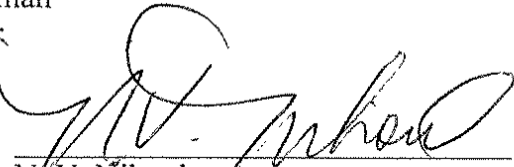
In disputes of this nature, it is the Organization's sole burden of proof to establish the essential facts necessary to support its claim. That burden cannot be satisfied by mere assertion. On the record before us, therefore, we must find that the Organization had not proven that the Agreement was violated as alleged in the claim. Accordingly, the claim must be denied.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


R. C. Robinson,
Organization Member


N. V. Nihoul,
Carrier Member

Date: Feb. 11, 2009