

## **SPECIAL BOARD OF ARBITRATION**

### **PARTIES TO THE DISPUTE:**

Brotherhood of Locomotive Engineers

and

CSX Transportation, Inc.  
(former Louisville & Nashville Railroad Company)

### **STATEMENT OF CLAIM:**

Claim on behalf of Engineer C.V. McBrayer, ID 191107, for 120 miles on each date of March 12, 13, 14, 15, 18, 19, 20 and 21, 2002, when Work Train M038 was abolished and replaced with Brandt Truck #CSXT 79995.

### **FINDINGS:**

This Board has jurisdiction only over the dispute set forth in the Statement of Claim. The Brotherhood of Maintenance of Way Employees (BMWE) was given notice as an interested Third Party, and this organization was given the record of on-property handling and the respective submissions of the parties. The BMWE participated in the arbitration proceedings.

#### **I.**

The Claimant, Engineer C.V. McBrayer, was assigned as engineer on Work Train M038 at Cullman, Alabama. He worked the assignment on March 5, 6, 7 and 8 observed rest days on March 9 and 10 and on March 11, 2002, Crew Management notified him of the abolishment of M038 as of the completion of the March 11 work day. Mr. McBrayer

exercised his seniority to M032, another work train located at Cullman. The text of the claim stated:

**\*\* CLAIM TEXT \*\***

REPLACED BY A CSXT BRANDT TRUCK. CREW CALLER CALLED ON 03-11-02 AND ABOLISHED MY JOB M038 AND WAS REPLACED BY BRANDT TRUCK # CSXT 79995 AND TRUCK WAS COUPLED TO A CSXT FLAT CAR 603547 & A SBD AIR DUMP CAR 995344. THE CARRIER REPLACED MY JOB WITH THIS TRUCK. ALSO BRANDT TRUCK HAD TO SWITCH OUT CARS FOR THEIR TRAIN WITH M78812 ON DUTY AT THE SAME TIME. 1<sup>ST</sup> DIVISION PUBLIC LAW BOARD AWARD 23969. BRANDT TRUCK SWITCHED ON HOUSE TRACK, TEAM TRACK & SN&A NORTH MAIN LINE.

The two cars identified in the above text that were coupled to the Brandt Truck were flat car 603547 and SBD air dump car 995344. Flat cars are used in Maintenance of Way service to haul items such as rail, crossties, spikes and plates. The air dump car is a ballast hopper car. Is it not disputed that both cars were cars used in conjunction with Maintenance of Way work. In the Regional Director Labor Relations response to the Organization's appeal, it is asserted that the local switcher (M788) switched out cars "pertaining to their assignment." It is unclear what assignment is referenced in this regard. The board assumes that the Brandt Truck switched out the flat car and air dump car from cars previously handled by the M038 in order to perform the Maintenance of Way work scheduled for it.

**II.**

The BLE states that the crux of this dispute is the Carrier's misplaced notion that a Brandt Truck is not within the purview of "self propelled vehicles", as that term is applied under Article III, Section 2 of June 25, 1964 National Agreement, for operation of locomotive engineers when such vehicles are used to move rail cars in work train

service. From the outset, the Organization states that it does not claim any rights to operate Brandt Trucks in off-track operations, or the equipment attached thereto for the purpose of track repair and maintenance that does not involve the movement of rail cars. The Organization's position is that Brandt Trucks are within the meaning of motive power for exclusive operation by locomotive engineers when used to move rail cars in work train service, as required by Article 26, Section 13 of the L&N Property Engineer's Agreement. Also, the Organization states that its position is supported by agreement rules, interpretations and past applications thereof (see for example the May 7, 1954 claim settlement letter) and arbitral precedence. The Organization states that the Carrier usurped BLE rights when it assigned duties of moving rail cars with Brandt Trucks to another craft of employees.

The Organization states that the Carrier previously and unsuccessfully challenged the right of Locomotive Engineers to man Trackmobiles when the Carrier employed its use to move rail cars in work train service resulting in First Division Award No. 23969. The BLE states that this award concluded that despite the absence of "train orders" as a requirement for use of a conductor/pilot as found in Section 1 of the 1964 Agreement, and limited multi-purpose capability of the Trackmobile not related to the movement of cars in work train service, "The BLE Organization has sustained its burden of proof in this case to the extent that it has exclusive right to continue to operate the motive power--including Switchmaster Trackmobiles--used to propel rail cars in work train service." Moreover, it states that the Carrier failed to prove that the primary on-rail function of the Brandt Truck is any different from that of the Trackmobile or any other type of motive power when used to propel rail cars.

The Organization believes it has provided sufficient evidence to render the Carrier's unilateral decision to replace locomotive engineer positions on motive power used to move rail cars in work train service with employees from another craft in violation of existing BLE contracts.

The Carrier contends that the instant claim is barred by virtue of the doctrine of laches. It states that the Brandt Truck was first placed into service in March, 1994 and it asserts that the evidence shows the BLE accepted the Brandt Truck's operation as they would any other piece of Maintenance of Way equipment. The Carrier states the Organization allowed the practice to exist for many years before finally deciding to protest -- an action which was initiated too late for the case to be considered on the merits.

The Carrier states that the Organization has no right under agreement with the Carrier, exclusive or otherwise, to operate the Brandt Truck, and the Agreement has not been violated.

The Carrier asserts that the contractual and historical right to operate self propelled Maintenance of Way equipment belongs to the Maintenance of Way employees represented by BMWE.

The Carrier believes that the Organization's reliance on First Division Award 23969 is misplaced. It states that the machine which was the subject of that award, the Trackmobile, serves no other purpose other than the movement of rail cars and no off-track uses for the machine were established. It was further held that equipping it with a power winch, which was added prior to arbitration, did not change the basic character of

the Trackmobile. The Carrier states that it has shown that the Brandt Truck is designed for uses other than moving rail cars.

The Carrier contends that the Organization has not presented a proper claimant.

The BMW's third party response asserts that the operation of the Brandt truck is Maintenance of Way work and is reserved to the BMW under its Scope Rule and Rule 1 of the June 1, 1999 Agreement between BMW and CSXT.

### III.

The Organization's claim deals with the on-rail operation of a "Brandt Truck," which is a heavy duty flat bed highway truck that also is equipped for on-rail use. The flat bed is used to carry both heavy and light maintenance of way equipment and tools and an eight ton crane. As to operating on-rail, the vehicle has air hoses, horns, sanders, locomotive quality head lights, brake valves and corresponding gauges to monitor air pressure in break pipe, main reservoir, equalizing reservoir and brake cylinder and an auxiliary air compressor to restore air supply to train-line reservoir on rail cars -- and it is equipped with drawbars and couplers and has the capacity to move up to 15 rail cars at 40 mph.

The board is limited to resolving the case before it, which consists of a Brandt Truck in an on-rail mode being coupled to a flat car and an air dump car containing ballast which was thereafter used to perform Maintenance of Way work. This board concluded that the operator switched out the two cars needed to perform the Maintenance of Way work from cars previously handled by the M038 work train.

Self-propelled machines such as pile drivers, Burro cranes, ditchers, clam-shells, and rail grinders are equipped with drawbars and couplers and have sufficient power to

move not only themselves but also one or more rail cars necessary in the performance of their Maintenance of Way work. When they are operated in the performance of Maintenance of Way work, they are covered by the Schedule Agreement between the Carrier and the BMW. The Brandt Truck was included in the current system wide BMW Agreement implemented in 1999, as set forth in Rule 1(c)(1) - Machine Operators Roster.

We conclude in this case that the Brandt Truck was used as a "self-propelled machine" in conjunction with Maintenance of Way duties during the claim dates. It certainly switched and moved two Maintenance of Way cars for the purpose of performing Maintenance of Way work. Over the eight claim dates it had the capacity to load and haul materials and equipment while on-rail, as well as loading and hauling and handling materials and equipment off-rail, over the road during this period. No evidence exists that the Brandt Truck was a mere substitute for a locomotive during this period. No evidence of record shows that it was not utilized for its off-track functions and its "machine" functions such as the picking up and unloading of track materials during the claim dates. We find that the Brandt Truck, as utilized in the present case, is clearly a self-propelled machine within the purview of Article III, Section 1 of the 1964 National Agreement. Having concluded that the Brandt Truck was utilized as a self-propelled machine, Article III, Section 2 of the June 25, 1964 National Agreement controls when a locomotive engineer is to be utilized. It reads as follows:

Section 2

Rules or practices under which a locomotive engineer, or fireman where presently required, is employed on on-rail self-propelled vehicles or machines for the purpose of operating the machine in the performance of all the work for which such machines are designed are retained.

The Brandt Truck did not exist in June of 1964, when Section 2 of the June 25, 1964 National Agreement took effect and thus no rules or practices existed to be carried forward regarding the operation of this vehicle. Section 2 requires the employment of a locomotive engineer on self-propelled vehicles or machines where the locomotive engineer operates it in the performance of "all" the work for which such machines are designed. The BLE claims the exclusive right to operate the vehicle when used to move rail cars in work train service. The Brandt Truck is designed and utilized to perform many other functions in Maintenance of Work service than the movement of rail cars. Clearly, locomotive engineers are not qualified to perform all of the work for which the Brandt Truck was designed. We find therefore that Section 2 does not support the BLE claim.

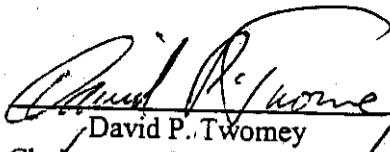
We have carefully considered the other Agreement rules cited by the Organization, the 1953 settlement letter regarding the operating of the self-propelled Burro crane handling two cars in Louisville terminals in work train service. We find, however, no rule support for the Organization's position as applied to the case now before the board. First Division Award No. 23969 dealt with a question regarding whether the BLE had sustained its burden of proof regarding the exclusive right to the operation of Trackmobiles involved in the Maintenance of Way work. The question was answered in the affirmative. The purpose of the Trackmobile was to move rail cars and it had no other function in Maintenance of Way service. Its design contained no mechanical on-track function except to provide tractive power for movement of rail cars. The Brandt Truck is designed to perform numerous Maintenance of Way tasks in conjunction with and in addition to the movement of rail cars in Maintenance of Way


service. The Trackmobile precedent from Award 23969 is simply inapplicable to the self-propelled machine as used in the record before us, which is the subject matter of the Organization's grievance in this case.

The Organization presents scenarios involving the use of a Brandt Truck on the C&O business unit on March 12, 2002, an incident on January 29, 2003, on the S&NA District and an incident on the HD District on February 24, 2003. This board is confined to addressing the claim dates and circumstances before it. We cannot and therefore do not address matters not properly before us; nor should the decision of this board be deemed a resolution of claims based on essentially dissimilar facts or occurrences.

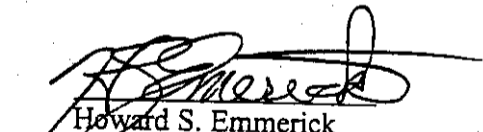
AWARD

Claim denied.

  
David P. Twomey  
Chairman and Neutral Member

  
Paul T. Sorrow  
Organization Member

*I dissent!*

  
Howard S. Emmerick  
Carrier Member

Dated: September 24, 2003