

The First Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

(CSX Transportation, Inc.
PARTIES TO DISPUTE: (
(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE:

"Has the Organization sustained its burden of proving exclusive rights to the operation of trackmobiles involved in track maintenance work."

FINDINGS:

The First Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

In April 1988, the Carrier leased a number of Switchmaster Trackmobiles and placed them in service with outside contractor operators. The Brotherhood of Maintenance of Way Employees informed the Carrier of its position that the use of Trackmobiles in the performance of maintenance of way work was reserved by its Agreement to employees it represents. The Brotherhood of Locomotive Engineers took the position on the former L&N that the Carrier's failure to run Trackmobiles with Locomotive Engineers constituted a major dispute. Carrier agreed not to operate Trackmobiles outside shop areas, in the on-rail mode, on the former L&N until the question of whether Locomotive Engineers or BMW machine operators had contractual rights to the work is decided. By letter dated October 20, 1988, the Carrier notified the BLE of its intent to file this dispute with the Board as follows:

"This is to serve Notice, as required by the Rules of the National Railroad Adjustment Board, of our intention to file an Ex Parte Submission covering an unadjusted dispute between the Brotherhood of Locomotive Engineers and CSX Transportation, Inc., involving the question:

'Has the Organization sustained its burden of proving exclusive rights to the operation of trackmobiles involved in track maintenance work.'

Very truly yours,

/s/ G. F. Leif

G. F. Leif
Director of Labor Relations"

The BMWF filed a Third Party Submission to the Submissions of the BLE and the Carrier and its representative appeared before the First Division along with the Carrier's representatives and the representative of the BLE.

After full consideration of the positions of the Labor Organizations and the Carrier, we answer the question as follows:

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 on the former L&N.

Prior to April, 1988, the Carrier advertised an engineer assignment to perform work train service on the Mobile Division. The advertisement was dated February 20, 1988, and the work train assignment was awarded to Engineer G. H. Whidby on February 25, 1988. On April 16, 1988, the Carrier abolished the work train assignment and Engineer Whidby exercised displacement rights. Subsequently, the Carrier installed a Trackmobile to perform service identical to the work train service previously performed by Engineer Whidby. The Carrier admits that prior to the installation of the Trackmobile, the work would have been performed by a locomotive operated by a Locomotive Engineer.

We find that the purpose of the Trackmobile is to move rail cars upon railroad tracks. It is equipped with headlights, marker lights, drawbars, air hoses and sanders. Its design contained no mechanical on-track function except to provide tractive power for movement of rail cars. Photographs taken on the property show the utilization of the Trackmobile, providing motive power for maintenance of way machinery located on rail cars, coupled to other rail cars forming a train.

We disagree with the BMW's position that Trackmobiles perform the functions and have the physical characteristics of work equipment, "heavy machines" or "power driven machines" as referred to in the BMW Working Agreement.

The BLE does not claim that it has the exclusive right to operate the Trackmobile in any off track operation the Carrier may require. No evidence of record, other than mere assertions, have shown that off track uses for the Trackmobile exist. Should the Carrier have off track uses for the Trackmobile, this work may well belong to the BMW. The manufacturer's literature made available to the Board and the photographs of the Trackmobile in use on the property do not show that it is equipped with a power winch. The fact that a power winch has been added to the Trackmobile after the handling of this dispute on the property does not change the basic character of the Trackmobile and convert the Trackmobile to work equipment covered by the BMW Agreement, just as the addition of a power winch to a locomotive would not convert the locomotive to equipment to be operated by the BMW. The power winches added to the Trackmobile are to be operated by the craft holding contractual rights to that work. The BLE does not claim that it has the exclusive right to operate such winches.

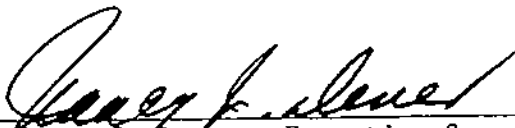
Article 26, Section 13 and Article 4, Section C provide Agreement support that the operation of the Trackmobile in work train service is exclusively reserved to the BLE on the former L&N.

A W A R D

The question is answered in the affirmative.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1990.