



24950 COUNTRY CLUB BLVD., STE. 340
NORTH OLMSTED, OHIO 44070-5333
PHONE: 216-228-9400 • FAX: 216-228-0937
www.smart-union.org/td/

JEREMY R. FERGUSON
President

LEGAL DEPARTMENT

KEVIN C. BODAR
General Counsel

ERIKA A. DIEHL-GIBBONS
Associate General Counsel

SHAWN M. MCKINLEY
Assistant General Counsel

TRACEY L. NEIGHBORS
Paralegal

July 13, 2021

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July 13, 2021
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Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington D.C. 20423

RE: *Finance Docket No. 33388 (Sub-No. 102), CSX Transportation, Inc. –
Petition for Declaratory Order and
Cease and Desist Order*

Dear Ms. Brown,

Enclosed for electronic filing is Respondent International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division's ("SMART-TD") Response to Petitioner CSX Transportation, Inc.'s Petition for Declaratory Order and Cease and Desist Order w/ Exhibits in the above-captioned matter.

Sincerely,

/s/ Shawn M. McKinley
Assistant General Counsel for SMART-TD

Cc: Ronald Johnson, Counsel for CSX

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub-No. 102)

INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL
AND TRANSPORTATION WORKERS – TRANSPORTATION DIVISION’S
RESPONSE TO PETITIONER CSX TRANSPORTATION, INC.’S PETITION
FOR DECLARATORY AND CEASE AND DESIST ORDERS

Shawn M. McKinley
Assistant General Counsel
SMART-TD
24950 Country Club Blvd. Ste. #340
North Olmsted, OH 44070
smckinley@smart-union.org
(216) 228-9400

This matter arises as a result of the abolishment of Job Y122 in Rougemere Yard, a yard owned and operated by CSX Transportation, Inc. (“CSXT”). CSXT and the Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers (“SMART-TD”) are currently engaged in a dispute over the appropriate jurisdiction for the resolution of claims filed by SMART-TD on behalf of the employee affected by the abolishment said job. CSXT’s late-in-the-day argument wherein it claims that the abolishment of Y122 is subject to the Surface Transportation Board’s (“STB”) exclusive jurisdiction under the protective conditions contained in *New York Dock Ry. – Control Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), is a self-serving attempt to avoid liability at arbitration before the National Railroad Adjustment Board (“NRAB”). As explained below, CSXT never treated the abolishment of Y122 as a *New York Dock* issue until it was faced with hundreds of claims filed over more than three years. The jurisdiction of the STB over transactions is not “timeless and limitless,” and CSXT’s actions constitute a waiver of any claim raised now that the STB has jurisdiction with respect to a transaction that was completed over two decades ago. As such, CSXT’s Petition for Declaratory Order and Cease and Desist Order (“Petition”) should be denied.

I. FACTUAL BACKGROUND

In or around October 2017, CSXT decided to abolish job Y122, effective November 11, 2017, and have Conrail perform the work in question. In its Petition, CSXT describes Y122 as “transfer operations” that originated in CSXT’s Rougemere Yard which “traveled over several miles of CSXT track to a connection with Conrail track...” and “then traveled over a few miles of Conrail track to reach Livernois Yard...” (Petition at pg. 10). As stated by CSXT, Y122 then “returned to Rougemere Yard with cars picked up at Livernois Yard.” (*Id.*).

At the time Y122 was abolished, CSXT listed the stated “abolishment reason” as “Conrail interchange.” (Exhibit (“Ex.”). A at pg. 2). Further, shortly before Y122 was abolished, Conrail management provided a more detailed statement stating the reasons for its elimination than that contained in CSXT’s lone bulletin. In a letter dated October 27, 2017, addressed to SMART-TD Local Chairperson G. Karkoska, who serves as the local chairperson representing certain Consolidated Rail Corporation (“Conrail”) employees, Conrail Director of Labor Relations T.L. Bolton discussed the abolishment of Y122 in a letter with the subject, “Rougemere Yard Interchange.” (Ex. B). There, Mr. Bolton stated the following:

“In accordance with Rule 68 of the Agreement between the parties, this is to notify you of Conrail’s intent to institute interchange service at CSX’s Rougemere Yard in Detroit, MI. The Westbound and Eastbound Main tracks at Rougemere Yard are designated for the cars arriving at Rougemere from Conrail and Tracks Number 7 and Number 8 Receiving are designated for the cars which Conrail crews will be picking up there. Notice of the designated interchange tracks will also be immediately placed in the Conrail Detroit SAA Operating Bulletin. This interchange service is scheduled to begin on November 11, 2017.

Please contact me if you have any questions regarding this change in service.”

(*Id.*) (emphasis added). Despite CSXT’s claims to the contrary in its Petition, from the beginning CSXT and Conrail management clearly stated that the abolishment of Y122 was due to the establishment of new interchange service. Importantly, the bulletin announcing the abolishment of Y122 from CSXT was the only notice given by it to SMART-TD.

As a result of the abolishment of Y122 on the basis that such a change was a result of newly established interchange service, SMART-TD began to promptly file time claims on behalf of the affected employee no later than December of 2018. These claims stated:

“Allow 8 hours pay for CSX abolishing my regular assignment the Y122 on [Date] in violation of Rule 1, Rule 3, and Rule 106 by farming out Rougemere Yard work to shared assets, another railroad. Rougemere Yard is a solely CSXT owned assignment. For this reason an 8 hour penalty is due.”

(Ex. C). The basis for such claims is that by having Conrail perform the interchange work, CSXT has violated several rules contained within the B&O Agreement, particularly Rule 106 and Article III. Rule 106 governs the terms and conditions of interchange work while Article III guarantees yard employees a certain percentage of transfer service. CSXT declined the claims filed by SMART-TD, stating:

Claim denied. There is no violation in the carrier abolishing Y122, and claimant has failed to give any contractual support which prohibits the carrier from abolishing an assignment. Claimant has failed to identify any of the work allegedly being performed by shared assets which purportedly violates the cited rules of the agreement. Claimant has failed to provide sufficient information to validate and support his claim.

(Ex. C). SMART-TD continued filing claims, which were timely appealed to the highest designated officer pursuant to claims handling procedure of the B&O Agreement. (Ex. D). There are currently more than 400 time claims as of this date. Indeed, from the time CSXT initiated this action over three and half (3 ½) years ago, SMART-TD filed and progress claims notifying CSXT that it would be moving these claims to matter to arbitration pursuant to Section 3 of the Railway Labor Act

It was not until a letter dated April 6, 2021, years after claims had been filed and progressed regarding the abolishment of Y122, did CSXT first venture to state that “the matter is governed not by the B&O Agreement, but rather by the Operating Agreement for the Detroit Shared Assets”¹ and that “no interchange is involved.” (Ex. E). CSXT asserted, “[t]he STB’s jurisdiction to approve such operating arrangements, and its approval of them, supersedes collective bargaining agreements negotiated under the Railway Labor Act.” (*Id.*). Further, CSXT’s letter concluded that “any impacts on CSXT employees from this operational change

¹ The details of the acquisition of Conrail by CSXT and Norfolk Southern Railway is explained in CSXT’s Petition as well as Finance Docket No. 33388.

must be addressed under the *New York Dock* conditions and the *New York Dock* Implementing Agreement applying those conditions to the Conrail Transaction.” (*Id.*). Finally, and again for the first time, CSXT invoked the arbitration procedures contained in Article I, Section 11 of the *New York Dock* conditions and appointed Director of Labor Relations Jennifer Manz as their member of the Section 11 committee, and requested that SMART-TD inform CSXT of who would serve as SMART-TD’s representative. (*Id.*).

SMART-TD General Chairperson Rick Lee (“GC Lee”) responded to CSXT’s April 6, 2021, letter on April 8, 2021, stating that the Union viewed the dispute as one falling under Section 3 under the Railway Labor Act, and that it would not designate a member to any *New York Dock* arbitration committee unless required to by the STB. (Ex. F). On April 16, 2021, CSXT informed GC Lee, “given you did not name a member by April 16, you have been designated as the Organization’s member per Section 11.” (Ex. G). On April 29, 2021, when it became apparent CSXT was attempting to evade the arbitration forum with respect to the hundreds of outstanding claims, SMART-TD filed its Notice of Intent with the First Division of the National Railroad Adjustment Board (“NRAB”) (Ex. H). Said Notice stated the claim as follows:

“Allow [] a basic eight (8) hour day penalty due to CSX’s willful violation of the CBA, in particular but not limited to the Scope Rules/Articles, Rule 59, Article 3, and Rule 106, BLE 1971 Interchange agreement. The violation of the CBA has eliminated a prior right employees’ ability to work an assignment of his choosing belong [*sic*] to CSX employees and was illegally “farmed out” to Conrail SA to which they are not entitled to, in an attempt to eliminate assignment to reduce[] costs for the stockholders. Consider this claim as notice that this is a continuous claim starting on November 19, 2017, and will be continued until resolved under the RLA. If CSX chooses to deny and not resolve the issue they do so at their own peril and should pay all claims in the full amount.”

(*Id.*). Notwithstanding SMART-TD’s Notice of Intent with the NRAB, CSXT moved forward with the establishment of an arbitration board pursuant to Section 11 of *New York Dock*

conditions. SMART-TD's position remained the same, that it would not participate in such an arbitration until required to do so by the STB, and CSXT requested a neutral be appointed by the National Mediation Board dated May 24, 2021. (Petition at pg. 18). The NMB has yet to do so. (*Id.*).

Following further unsuccessful attempts to force SMART-TD to *New York Dock* arbitration, CSXT filed its extant Petition with the STB on June 15, 2021. (Petition at pg. 1). Despite failing to raise any of these arguments for several years, CSXT has now brought its late-in-the-day position that the abolishment of Y122 is subject to the exclusive procedures contained in the *New York Dock* protective conditions to the STB. CSXT argues that the STB has exclusive jurisdiction over any claims involving the abolishment of Y122, and that “[b]y pursuing RLA arbitration of matters that should be heard by a Section 11 Committee, SMART-TD is attempting a collateral attack on this Board’s jurisdiction and its approval in the *Conrail Decision*.” (*Id.* at pg. 30). Specifically, CSXT seeks: a declaration that the parties’ dispute is subject to the STB’s jurisdiction; a declaration that the Detroit Shared Assets Area Operating Agreement supersedes the B&O Agreement; a declaratory order that the dispute is subject to a Section 11 *New York Dock* arbitration; an order directing SMART-TD to participate in such; and an order directing SMART-TD to cease and desist progression of its claims before the NRAB. (*Id.* at pgs. 5-6).

II. ARGUMENT

CSXT’s requests for relief should be rejected. It cannot seek arbitration under *New York Dock* or obtain an order declaring that the after-negotiated aspects of B&O Agreement are abrogated as a result of the transaction more than 20 years ago. As explained below, the STB’s jurisdiction is not “timeless and limitless.” Further, CSXT now engages in a self-serving attempt

to avoid liability before the NRAB by invoking the arbitration procedures contained in *New York Dock*. Accordingly, CSXT's arguments should be rejected, and the STB should decline to exercise jurisdiction over the present dispute.

A. The STB's Jurisdiction With Respect to Transactions is Not Timeless and Limitless.

It is understood that the STB has the authority to exempt a carrier from the RLA's mandate that existing CBAs are binding when approving a transaction, but such an exemption is only when "necessary to carry out an [STB]-approve transaction." *Norfolk & Western Ry. Co. v. Am. Train Dispatchers' Ass'n*, 499 U.S. 117, 131-133 (1991) (emphasis added). Following the Supreme Court's decision in *Am. Train Dispatchers' Ass'n*, the Interstate Commerce Commission² stated that the meaning of "necessary" is that the RLA can be superseded if it is "an impediment to the approved transaction... [i]n other words, the necessity predicate assures that the exemption is no broader than the barrier which would otherwise stand in the way of implementation." *CSX Corp. – Control – Chessie Sys., Inc. and Seaboard Coast Line Indus., Inc.*, 8 I.C.C.2d 715, 721-22 (1992).

CSXT now argues that the Operating Agreement gives it the right to use Conrail to perform the duties originally performed by Y122. However, work performed by CSXT employees working in and out of Rougemere Yard has always been done so pursuant to the terms of the B&O Agreement without alteration. This is evidenced by CSXT's request now in 2021, more than 20 years after the original transaction, for a finding that the Operating Agreement and the New York Dock Implementing Agreement supersedes requirements in the B&O Agreement. (Petition at pg. 5). Federal courts have been clear that "[a]t some point, STB jurisdiction over the interpretation of an implementing agreement ceases, and the parties will be

² The Interstate Commerce Commission was abolished in 1996 and replaced by the STB.

required to resort to the Railway Labor Act to resolve disputes arising under the collective bargaining agreements then in effect.” *CSX Transp., Inc. v. Transp. Communications Intern. Union*, 480 F.3d 678, 684 (4th Cir. 2007). “[T]he STB has recognized that its exclusive jurisdiction pursuant to the Interstate Commerce Act over disputes arising from approved transactions or implementing agreements may not be ‘timeless and limitless.’” *Id.* at 684 *citing Del. & Hudson Ry. Co. – Lease & Trackage Rights Exemption – Springfield Terminal Ry. Co.*, 8 I.C.C.2d 839, 845 (1992).

CSXT now seeks to invoke the STB’s jurisdiction decades after the completion of the transaction wherein CSXT and Norfolk Southern Railway obtained Conrail. It cannot be said that the STB now must act and declare that the B&O Agreement is abrogated by the Operating Agreement approved more than 20 years ago because such is “necessary” or that the RLA is at this time an “impediment to the approved transaction.” *Seaboard Coast Line Indus., Inc.*, *supra*. The transaction is done. Work has been performed out of Rougemere Yard by CSXT employees represented by SMART-TD working under the B&O Agreement for decades. CSXT’s attempt to argue what is standard grist for Section 3 arbitration is somehow now magically transformed into a matter that the STB must act on and declare that the B&O Agreement has been abrogated is simply beyond the pale and should be rejected .

B. CSXT’s Actions Belie Any Argument That the STB Has Jurisdiction Pursuant to the New York Dock Protective Conditions.

As stated above, Y122 was eliminated in November 2017. Importantly, at no point when CSXT abolished Y122 did it provide the notice required by the *New York Dock* protective conditions. It is well-settled that “a railroad contemplating an operational change that may result in dismissal, displacement, or rearrangement of employees, must provide ninety days written notice of its intent to interested employees and their representatives.” *See New York Dock*

Railway – Control – Brooklyn Eastern District Terminal, 60 I.C.C. 60, 77 (1979); see also *CSX Transp., Inc. v. Transp.-Communications Int’l Union*, 413 F.Supp.2d 553, 562 (D. Maryland 2006). CSXT failed to do so here. The only notice given from CSXT to its employees and the representatives of SMART-TD regarding the abolishment of Y122 was the bulletin posted in November 2017, which merely stated that Y122 was being abolished due to Conrail Interchange. (Ex. A). Such does not comply with the requirements of a *New York Dock* Notice and belies CSXT’s argument that those protective conditions apply to the abolishment of Y122. Furthermore, CSXT’s statement in the bulletin with respect to “Conrail Interchange” as well as Conrail’s own letter to SMART-TD regarding Y122 which discussed “Conrail’s intent to institute interchange service at CSX’s Rougemere Yard...” further provide evidence that CSXT did not view the abolishment of Y122 as one involving *New York Dock* conditions (Ex. B).

In fact, at no point until more than three years after SMART-TD began filing claims did CSXT even mention the application of *New York Dock* protective conditions as to the abolishment of Y122. As stated previously, CSXT first denied SMART-TD’s claims with no reference to *New York Dock* whatsoever, instead stating:

There is no violation in the carrier abolishing Y122, and claimant has failed to give any contractual support which prohibits the carrier from abolishing an assignment. Claimant has failed to identify any of the work allegedly being performed by shared assets which purportedly violates the cited rules of the agreement. Claimant has failed to provide sufficient information to validate and support his claim.

(Ex. C). It was not until 2021, more than three years later, that CSXT first suggested that the NRAB lacked jurisdiction over the claims submitted. Where a carrier raises questions over the jurisdiction of the NRAB so late, such constitutes a waiver. See *Transp. Communications Int’l Union*, 480 F.3d at 682. While in that case the carrier had voluntarily participated in proceedings

before the NRAB, the principle still stands that waiting years to invoke *New York Dock* arbitration constitutes a waiver of the right to do so.

The principle that inaction constitutes waiver is further codified in the *New York Dock* protective conditions itself, which states, “within 30 days after the dispute arises, it may be referred by either party to an arbitration committee.” *New York Dock*, 60 I.C.C. at 80 (emphasis added). CSXT’s newfound position this matter has always been a dispute subject to *New York Dock* arbitration, is disingenuous at best. It is made up from whole cloth years after SMART-TD began filing claims, which gave unequivocal notice to CSXT of the dispute, before attempting to refer the matter to arbitration.

The reason for CSXT’s late-in-the-day argument that the abolishment of Y122 falls under the jurisdiction of the STB and *New York Dock* is made clear in its own Petition. There, CSXT admits that it believes that *New York Dock* would not provide for the remedy that SMART-TD is seeking. (Petition at pgs. 25-26). As stated previously, SMART-TD has filed hundreds of time claims for an eight-hour day penalty. (Ex. C). After more than three years of claims, CSXT is faced with hundreds of such with a potential liability at arbitration that is substantial.

Faced with such liability, CSXT has now invoked the *New York Dock* procedures and the reason is clear, it believes that SMART-TD cannot obtain the remedy requested in its claims under such procedures, a convenient outcome for CSXT. In its Petition, CSXT states, “[u]nder *New York Dock* conditions, an employee is eligible for labor protection only if adversely affected by a Board approved transaction.” (Petition at pg. 26). CSXT goes on to state that “SMART-TD has not alleged or shown that the claimant suffered a loss of earnings because of a New York Dock transaction...” and that “SMART-TD has disavowed seeking any New York Dock protective benefits.” (*Id.*). Finally, CSXT concludes that such must be the case “because the

claimant in fact continues to work other CSXT train assignments and has not suffered a loss of earnings...” and that “the remedy sought by SMART-TD is not allowed by *New York Dock*.” (*Id.*).

CSXT failed to treat this matter as a *New York Dock* issue for years and now apparently seeks to reap the benefit for doing so by asserting that SMART-TD’s claims do not state an adequate basis for relief under *New York Dock*.³ Such a position must be rejected for what it is. CSXT was notified of SMART-TD’s claims beginning in 2017 and did not raise the argument that the abolishment of Y122 was in-fact subject to *New York Dock* until it was faced with hundreds of claims. CSXT attempts now to invoke procedures for a transaction that occurred more than two decades ago in a transparent attempt to avoid liability and must not stand. CSXT should be found to have waived the jurisdiction of the STB, which is as already stated not “timeless and limitless,” and the present matter is precisely why such is the case.

CSXT’s nefarious motive in attempting to exhume the corpse of a transaction that has long been in the grave cannot be permitted to stand. Such will only lead to more such attempts to game the system and deny employees the right to arbitration that was promised by the RLA.

III. CONCLUSION

The STB’s jurisdiction over disputes arising from transactions such as CSXT’s acquisition of Conrail are not “timeless and limitless.” CSXT’s attempt to invoke *New York Dock* arbitration more than 20 years after the completion of the Conrail acquisition is merely an

³ If the STB determines that *New York Dock* applies and exercises jurisdiction, SMART-TD would reserve the right and requests permission to submit a claim that falls within the remedies available under such.

attempt to avoid any liability as a result of the abolishment of Y122, and its request for relief should be denied accordingly.

Respectfully Submitted,

/s/ Shawn M. McKinley

Shawn M. McKinley
Assistant General Counsel
Ohio Bar No. 95836
SMART-TD
24950 Country Club Blvd., Ste. 340
North Olmsted, OH 44070
Tel: (216) 228-9400
Email: smckinley@smart-union.org

Counsel for Defendant SMART-TD

CERTIFICATE OF SERVICE

I certify that on this 13th day of July, 2021 a true and correct copy of the foregoing document was served on counsel for all parties of record listed below via email:

Ronald Johnson, Esq.
Law Offices of Ronald M. Johnson
4909 Scarsdale Road
Bethesda, MD 20816
rmjohnson@rmjohnsonlaw.com

MCAI.MCBL **T&E DAILY MESSAGE** **DATE** 04/08/21 16:56
OPTION: INQU **MESSAGE DATE:** 111417 **NO:** 146 **PRT** **PAGE** 01
SHORT DESCRIPTION : DEDT YY122 ABOLISHED **SMART ID:** CA28963
EFFECTIVE DATE : 2017-11-18 0001
ASSIGNMENT DESCRIPTION : DET UP #301
TRAIN ID : Y122
ON DUTY MILEPOST : CH 1
KIND OF SERVICE : YARD
CRAFTS : ENGINEER, FOREMAN
DAYS : **MON** **TUE** **WED** **THU** **FRI** **SAT** **SUN**
ASSIGNMENT : YY122 YY122 YY122 YY122 YR70 YR70 YY122
ON-DUTY TIME : 0700 0700 0700 0700 0700 0700 0700
WORKING LIMITS : YARD LIMITS

NEXT FUNCTION:
MESSAGE :

Crew Assignment Form

Find: Select Action       

[List](#)
[Crew Request](#)
[History Record](#)
[Approvals](#)

Crew Request: CA28963

Assignment Type:

Attachments 

Requestor: Ewing, Michael

J2941

- ☒ Yard
☐ Local
☐ Pool

Effective Date: 2017-11-18 10:36:02 

Request Date: 2017-11-11 10:35:59 

Region:

Assigned To:

District: DE 

Status: Approved

Sub District: DT 

Job Type: Y - Yard Switcher

Train ID: Y122

Abolished? ☒

Abolishment Reason: CONRAIL INTEI

Yard Assignment Details

*Crew Terminal Milepost and Off Duty Milepost: CH 1 

Train Order Required: N

Terminal/Outlying:

CTM City and State: DETROIT MI

*Bulletin Printer ID:

- ☒ Terminal
☐ Outlying

*Train Departure Milepost: CH 1 

Kind Of Service: S - Yard

TDM City and State: DETROIT MI

*Road Code: BO

Train Arrival Milepost: 

Division: Chicago (CG)

TAM City and State:

*Yard Master Code: ROU 

*Assignment Description: DET UP #301

*TrainMaster Code Engineer:

*Additional Impact To

*Working Limits: YARD LIMITS

*TrainMaster Code Conductor:

Service to Customer? ☐

*Reason for Change: CONVENTIONAL. YR70 WILL BE REPLACING YR50 AS THE RELIEF. OFF DUTY DAYS REMAIN THE SAME

Train Profile? ☐

None of the Above? ☐

CSRA Article 57: 4-Day and 3-Day Work Rest Assignment? ☐

Customer Days of Service Change? ☐

SubDivision:  Filter >      0 - 0 of 0

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Sub Division

There are no rows to display.

New Row



October 27, 2017

Mr. G. Karkoska
Local Chairman, SMART-TD
18605 Hillcrest St.
Livonia, MI 48152-4321

smart.local1477@gmail.com

Dear Mr. Karkoska,

Subject: Rougemere Yard Interchange

In accordance with Rule 68 of the Agreement between the parties, this is to notify you of Conrail's intent to institute interchange service at CSX's Rougemere Yard in Detroit, MI. The Westbound and Eastbound Main tracks at Rougemere Yard are designated for the cars arriving at Rougemere from Conrail and Tracks Number 7 and Number 8 Receiving are designated for the cars which Conrail crews will be picking up there. Notice of the designated interchange tracks will also be immediately placed in the Conrail Detroit SAA Operating Bulletin. This interchange service is scheduled to begin on November 11, 2017.

Please contact me if you have any questions regarding this change in service.

Sincerely,



T. L. Bolton
Director, Labor Relations

Claimant's claim text entered and submitted to CSX for review.

CLAIM TEXT: ALLOW 8 HOURS PAY FOR CSX ABOLISHING MY REGULAR ASSIGNMENT THE Y122 ON 12/09/17 IN VIOLATION OF RULE 1, RULE 3, AND RULE 106 BY FARMING OUT ROUGEMERE YARD WORK TO SHARED ASSETS, ANOTHER RAILROAD. ROUGEMERE YARD IS A SOLELY CSXT OWNED ANDSIGNMENT. FOR THIS REASON AN 8 HOUR PENALTY IS DUE.

CLAIM TEXT FOR CON CODE: IDENTIFY ISSUE - RUNAROUND, DISPLACEMENT, OTHER: CLAIMING EIGHT HOURS FOR ILLEGALLY ABOLISHING MY REGULAR ASSIGNMENT WHILE WORKING Y122 AT ROUGEMERE

DATE & TIME OF ISSUE? 11190700
NAME & ID INVOLVED IN ISSUE OTHER THAN YOURSELF: NONE
TRAIN/JOB/LOCATION INVOLVED: Y12219 CH 1
ON DUTY TIME OF JOB INVOLVED: 0700
LOCATION OF JOB: ROUGEMERE, DETROIT, MI AGREEMENT
& ARTICLE VIOLATED: RULE 1, RULE 3 AND RULE 106

CSXT's declination to the Claimant's initial claim.

DECLINE TEXT: CLAIM DECLINED. THERE IS NO VIOLATION IN THE CARRIER ABOLISHING THE Y122, AND CLAIMANT HAS FAILED TO GIVE ANY CONTRACTUAL SUPPORT WHICH PROHIBITS THE CARRIERFROM ABOLISHING AN ASSIGNMENT. CLAIMANT HAS FAILED TO IDENTIFY ANY OF THE WORK ALLEGEDLY BEING PERFORMED BY SHARED ASSETS WHICH PURPORTEDLY VIOLATES THE CITED RULES OF THE AGREEMENT. CLAIMANT HAS FAILED TO PROVIDE SUFFICIENT INFORMATION TO VALIDATE AND SUPPORT HIS CLAIM.

Jason Floyd - Claim Appeal
Director of CSXT Labor Relations
6th Floor, J-455
500 Water Street
Jacksonville, Florida 32202

July 3rd, 2018

RE: LCAT File Number 18-53433-BOUTU

Dear Sir: Please accept this appeal of the following claim and forward a letter for a payment or a statement of your reason for declination.

Statement of Claim:

Allow the Claimant a basic eight (8) hour day penalty due to CSX's willful violation of the CBA, in particular but not limited to the Scope Rules/Articles, Rule 59, Article 3, and Rule 106. The violation of the CBA has eliminated a prior right employees ability to work an assignment of his choosing belong to CSX employees and was illegally "farmed out" to Conrail SA to which they are not entitled to, in an attempt to eliminate assignment to reduced costs for the stockholders. Consider this claim as notice that this is a continuous claim starting on November 19, 2017 and will be continued until resolved under the RLA. If CSX chooses to deny and not resolve the issue they do so at their own peril and should pay all claims in the full amount.

Statement of Facts:

On November 17, 2017, Crew Management displaced Patrick M. Gay (ID# 199599) from his regular assignment, the Y122 operating at CSX Rougemere Yard in Detroit, MI., Milepost CH 1, at 0937 hours while he was observing two rest days prior to the advertised effective date of the abolishment of his assignment.

The Y122 is an independent yard assignment operating solely in Detroit to switch and transfer cars back and forth from Rougemere Yard (MP CH 1) to Conrail Shared Assets Livernois Yard. This work has always been performed by employees of the owning railroad of Rougemere Yard which predates even CSX. Since CSX took over Rougemere Yard from the former Pere Marquette railroad, CSX has utilized in accordance with the CBA the crews they employ as the facilities are still owned, operated, and maintained by CSX as an on duty point. Obviously this would also predate the acquisition of Conrail (Consolidated Rail Corporation) by CSX and Norfolk Southern in 1999. Moreover it must be pointed out that Livernois Yard is now jointly owned by CSX and NS under the banner of Conrail Shared Assets. It was not until the abolishment date of the Y122 that CSX chose to use Conrail SA supplied work force at a reduced rate versus their own crews to perform transfer and switching duties of the abolished assignment.

As a result of this violation Mr. Gay input the following claim as prescribed under Rule 32:

CLAIM TEXT: ALLOW 8 HOURS PAY FOR CSX ABOLISHING MY REGULAR ASSIGNMENT THE Y122 ON 12/09/17 IN VIOLATION OF RULE 1, RULE 3, AND RULE 106 BY FARMING OUT ROUGEMERE YARD WORK TO SHARED ASSETS, ANOTHER RAILROAD. ROUGEMERE YARD IS A SOLELY CSXT OWNED ANDSIGNMENT. FOR THIS REASON AN 8 HOUR PENALTY IS DUE.

CLAIM TEXT FOR CON CODE: IDENTIFY ISSUE - RUNAROUND, DISPLACEMENT, OTHER: CLAIMING EIGHT HOURS FOR ILLEGALLY ABOLISHING MY REGULAR ASSIGNMENT WHILE WORKING Y122 AT ROUGEMERE

DATE & TIME OF ISSUE? 11190700
NAME & ID INVOLVED IN ISSUE OTHER THAN YOURSELF: NONE
TRAIN/JOB/LOCATION INVOLVED: Y12219 CH 1
ON DUTY TIME OF JOB INVOLVED: 0700
LOCATION OF JOB: ROUGEMERE, DETROIT, MI AGREEMENT
& ARTICLE VIOLATED: RULE 1, RULE 3 AND RULE 106

CSX then denied this claim as prescribed under Rule 32 stating the following:

DECLINE TEXT: CLAIM DECLINED. THERE IS NO VIOLATION IN THE CARRIER ABOLISHING THE Y122, AND CLAIMANT HAS FAILED TO GIVE ANY CONTRACTUAL SUPPORT WHICH PROHIBITS THE CARRIER FROM ABOLISHING AN ASSIGNMENT. CLAIMANT HAS FAILED TO IDENTIFY ANY OF THE WORK ALLEGEDLY BEING PERFORMED BY SHARED ASSETS WHICH PURPORTEDLY VIOLATES THE CITED RULES OF THE AGREEMENT. CLAIMANT HAS FAILED TO PROVIDE SUFFICIENT INFORMATION TO VALIDATE AND SUPPORT HIS CLAIM.

Position of Organization:

The act of "farming out", "sub-contracting", or "shifting duties" of a CSX employee's work to another railroad carrier is prohibited under the UTU B&O Agreement. In connection with the Scope Rules of the Agreement the Organization directs you to Article 3, titled Service To Which Yardmen Are Entitled, which clearly reads under part (a), All transfer work performed within the switching limits. Pertinent parts of reproduced directly below states:

ARTICLE 3.

SERVICE TO WHICH YARDMEN ARE ENTITLED

(a) All transfer, construction, maintenance of way, and work trains doing work exclusively within the switching limits will receive not less than yardman's rate of pay.

Moreover, CSX has failed to properly notify or designate Rougemere Yard as an interchange point when reversing the interchange from Conrail SA. Livernois Yard as required under Rule 106. For your ready reference copied below is Rule 106, with underlining added for emphasis, which states:

RULE 106.

INTERCHANGE

(a) 1. At points where yard crews are employed, road freight crews may be required to receive their over-the-road trains from a connecting carrier or deliver their over-the-road trains to a connecting carrier provided such trains are solid trains which move from one carrier to another intact with or without motive power and/or caboose.

2. If road crews referred to in Section 1 of this Rule 106 are not required to return or deliver their motive power and/or their cabooses to or from their on or off

duty points an alternate means of transportation will be provided.

3. At designated interchange points, if a carrier does not now have the right to specify additional interchange tracks it may specify such additional track or tracks as the carrier deems necessary providing such additional track or tracks are in close proximity. Bulletins, specifying additional tracks will be furnished the General Chairman or General Chairmen involved prior to the effective date.

4. If the number of cars being delivered to or received from interchange tracks of a connecting carrier exceeds the capacity of the first track used, it will not be necessary that any one interchange track be filled to capacity before use is made of an additional track or tracks provided, however, the minimum number of tracks necessary to hold the interchange will be used.

5. Crews used in interchange service may be required to handle interchange to and from a foreign carrier without being required to run "light" in either direction.

Work equities between carriers previously established by agreement, decision or practice will be maintained with the understanding that such equity arrangements will not prevent carriers from requiring crews to handle cars in both directions when making interchange movements. Where carriers not now using yard and transfer crews to transfer cars in both directions desire to do so, they may commence such service and notify the General Committees of the railroad involved thereof to provide an opportunity to the General Committees to resolve any work equities between the employees of the carriers involved. Resolution of work equities shall not interfere with the operations of the carriers or create additional expense to the carriers. It is agreed, however, that the carriers will cooperate in providing the committees involved with data and other information that will assist in resolution of work equities.

6. The foregoing provisions are not intended to impose restrictions with respect to interchange operation where restrictions did not exist prior to the date of this Agreement.

(b) 1. Pursuant to the new road/yard provisions contained in the recommendations of Presidential Emergency Board No. 219, as clarified, a road crew may perform in connection with its own train without additional compensation one move in addition to those permitted by previous agreements at each of the (a) initial terminal, (b) intermediate points, and (c) final terminal. Each of the moves -- those

previously allowed plus the new ones -- may be any one of those prescribed by the Presidential Emergency Board: pick-ups, set-outs, getting or leaving the train on multiple tracks, interchanging with foreign railroads, transferring cars within a switching limit, and spotting and pulling cars at industries.

2. The crew of an over-the-road solid run-through train may perform one move as prescribed, in addition to delivering and/or receiving their train in interchange.

(Sections (b) 1 and 2 from Article VII of the November 1, 1991 National UTU Agreement.)

Rule 106, 3, was violated as there was not any correspondence with the General Chairman prior to the Bulletin abolishing the Y122 which performed the transfer work delivery freight to interchange with Conrail SA Livernois Yard and then returning to CSX Rougemere Yard. Rule 106 was further violated as a prior agreement with the Conrail Shared Assets sharing any equity nor has one been entered into. This work is 100% CSX employees work as Conrail SA did not exist until CSX and the NS acquired the Former Conrail in FD 33388. CSX entered into an Interchange Agreement with Conrail SA violating the agreement. CSX never filed a written notice to the General Chairman of jurisdiction, notifying him of the proposed work change. This unilateral change was done without agreement or consent from CSX SMART Transportation B&O General Chairman Steve Mavity.

This abolishment and Mr. Gay's removal was performed in violation of the Agreement one (1) day before the effective date of bulletin No. 146, published in the MCBL Screen, T&E Daily Messages. The Bulletin, reproduced below, was not advertised to take effect until November 18, 2017. The MCBL screen is used by employees to inform them of upcoming changes to assignments and required under Rule 59 of the B&O Agreement to be accurately posted.

Pertinent Parts of Rule 59, Assignment And Filling Of New Runs And Permanent Vacancies is reproduced below:

(h) New runs in all classes of service will not be made effective nor changes in existing runs made effective until after the expiration of the notice advertising same.

It is clear that CMC improperly displaced Mr. Gay from his regular assignment one day prior to force him to make a seniority move to another assignment or receive CAPS points as it is well advertised that Detroit is in a CSX self-created "man power shortage". Instead of Claimant receiving discipline for attendance Mr. Gay was forced to make a seniority move to the Y191 prematurely.

When addressing the CSX's initial declination it forces the Organization to ask if they even reviewed the claim. Mr. Gay provided all necessary documentation such as Rules No.'s and detailed the specific issue at hand. For CSX to feign ignorance as to what the issue at hand is simply a ploy to invoke burden of proof. The information given by Mr. Gay details the claim and in no way puts CSX at a disadvantage to properly investigate the claim properly. To believe otherwise one would have to believe they have no knowledge of the Agreement or the operational changes that CSX approved.

Conclusion

By entering into an illegal Interchange Agreement between Conrail SA (CSX owns half) and CSX one of the parent companies of Conrail SA the Agreement was violated by CSX and is required to pay Mr. Gay the penalty of a basic day for each day this violation continues. Please place claim in line for payment or a detail explanation for declination.

The Organization offers the following in support of this claim.

CSX's MCES Screen displaying the Seniority Roster's the Claimant is assigned and validating his prior rights status.

MCMS.MCES EMPLOYEE SENIORITY ROSTER INQUIRY DATE 05/16/18 09:24
PAGE 01 PRT _____

OPTION INQU

EMPLOYEE ID: 199599 NAME: PM GAY

A					SEN	TIE	STATUS
C	ROSTER ID	DESCRIPTION	QUAL	DATE	BRKR	AC	CDE
—	BOCOWESTER	B&O WESTERN CONSOLIDATED CONDUCTORS	TR	07/08/96	0003	—	—
—	BOENSYSTEM	BO NORTHERN MID-ATLANTIC ENGINEER ROST	EN	07/14/97	0003	—	—
—	BOENWESETS	B&O WESTERN ENGINEER ETS	FI	07/14/97	0013	—	—
—	BOENWESTER	B&O WESTERN CONSOLIDATED ENGINEERS	FI	07/14/97	0013	—	—
—	BOTRSYSTEM	BO NORTHERN MID-ATLANTIC TRAINMAN ROST	TR	07/08/96	0004	—	—
—	BOTRWESTER	B&O WESTERN CONSOLIDATED TRAINMEN	TR	07/08/96	0003	—	—
—	COCOCOMICH	CONSOLIDATED MICHIGAN CONDUCTOR	SEN. CO	07/08/96	0003	—	—
—	COENCONSPM	CONSOLIDATED PM ENGINEER SENIORITY DI	FI	07/14/97	0013	—	—
—	COENGRPSAG	GRAND RAPIDS-SAGINAW CONSOLIDATED ROST	FI	07/14/97	0013	—	—
—	COENSAGGRP	SAGINAW-GRAND RAPIDS CONSOLIDATED ROST	FI	07/14/97	0013	—	—
—	COFICONSPM	CONSOLIDATED PM FIREMEN SENIORITY DI	FI	07/14/97	0013	—	—
—	COTRCOMICH	CONSOLIDATED MICHIGAN TRAINMEN'S SEN.	TR	07/08/96	0003	—	—

Claimant's Employee Work History from the CSX Main Frame displaying that he was assigned and the incumbent Foreman on the Y122.

DIST: DE SUB-DIST: MI EMPLOYEE WORK HISTORY PSTS18X

EMPLOYEE NAME:	GAY	PM	EMPLOYEE NUMBER:	000199599						
START DATE:	111417		CURRENT ASSIGNMENT:	YY191 FO						
X DATE	TIME	FUNCTION	TRAIN/ASG	CC	EFF-TIME	EMP-AFF	LO	POOL	I-O	USERID
1114	0503	SCAL	Y12214	FO	11/14-0700		B0	YD	0	SYAQ
1114	1703	TIE UP/10	Y12214	FO	11/14-1703		A0	YD	0	SYAS
1115	0503	SCAL	Y12215	FO	11/15-0700		B0	YD	0	SYAQ
1115	1540	TIE UP/10	Y12215	FO	11/15-1540		A0	YD	0	SYAS
1116	0500	IVR-CNCL	DEDTYY122	FO	11/16-0500					F6008
1116	0503	SCAL	Y12216	FO	11/16-0700		B0	YD	0	SYAQ
1116	1628	TIE UP/10	Y12216	FO	11/16-1628		A0	YD	0	SYAS
1117	0606	RJNA(08)	Y19017	S1	11/17-0730					F6008
1117	0700	REST DAY	DEDTYY122	FO	11/17-0700		A0	YD	0	SYZR
1117	0937	AJ DEL	DEDTYY122	FO	11/17-0937		C1	YD		A4381
1117	1618	NTFY-IVR	DEDTYY122	FO	11/17-1618		C0			SY6R
1117	1622	SEN-MOVE	DEMIYY191	S1	11/17-1622	000534810	A0	YD	0	VRU

CSX T&E Daily Message (MCBL Screen) displaying the abolishment Assignment Y122 effective 11-18-17.

```
MCAI.MCBL          T&E DAILY MESSAGE          DATE 05/16/18 09:39
OPTION: INQU    MESSAGE DATE: 111417  NO: 146    PRT ____ PAGE 01
SHORT DESCRIPTION : DEDT  YY122  ABOLISHED      SMART ID: CA28963
EFFECTIVE DATE   : 2017-11-18 0001
ASSIGNMENT DESCRIPTION : DET UP #301
TRAIN ID         : Y122
ON DUTY MILEPOST : CH  ' 1
KIND OF SERVICE  : YARD
CRAFTS           : ENGINEER, FOREMAN
DAYS             : MON      TUE      WED      THU      FRI      SAT      SUN
ASSIGNMENT       : YY122  YY122  YY122  YY122  YR70    YR70    YY122
ON-DUTY TIME     : 0700    0700    0700    0700    0700    0700    0700
WORKING LIMITS   : YARD LIMITS
```

Thank you,

Donald Roach, Chairman, SMART-TD Local 1760

1/26 01:41 in 12 cars csxt 4409 fxe 210007
1/26 04:36 out 16 cars csxt 4409 tasx 7165
1/27 0033 in 9 cars ns 5242 rbox 33021
1/27 0428 out 39 cars ns 5242 csxt 496461
1/31 0634 in 46 cars csxt 4401/ns 5242 utlx 65950 r12
1/31 0933 out 61 cars ns 5242/csxt 4401 ecux 860269 emr
2/1 0412 in 55 cars ns 5242/csxt 4401 dttx 51042 r07
2/1 0532 out 32 cars csxt 4401/ns 5242 ashx 1232 r14
2/3 0112 in 64 cars csxt 4401/4409 intx 7204
2/3 0346 out 54 cars csxt 4409/4401 gatx 1514
2/5 0231 in 49 cars csxt 4409/4401 intx 77018
2/5 0511 out 62 cars csxt 4401/4409 gatx 67205
2/6 0629 in 42 cars csxt 4401/4409 csxt 493262 r11
2/6 0751 out 32 cars 4409/4401 ettx 802353 r17/19
2/10 0727 out 89 cars csxt 4401/ ns 5242 shqx 5110
2/13 0042 in 13 cars csxt 4401 nyc 627594
2/13 0610 out 58 cars csxt 4401 intx 7580
2/15 0425 in 39 cars csxt 4401 gatx 62
2/15 0626 out 24 cars csxt 4401 axlx 3150
2/17 0605 in 35 cars csxt 4401 eltx 2285
2/17 0827 out 45 cars csxt 4401 dvlx 5004
2/18 0303 in 34 cars ns 5242 mwcx 302204
2/18 0503 out 36 cars ns 5242 shqx 5713 r13
2/16 0544 in 28 cars csxt 4401 zvbz 6692
2/16 0703 out 52 cars csxt 4401 intx 21331
2/14 0615 in 39 cars bnsf 3896 wagx 3084
2/14 0820 out 45 cars bnsf 3896 intx 77080
2/12 0201 in 32 cars csxt 4401 axlx 2981
2/12 9331 out 25 cars csxt 4401 intx 462118
2/21 0214 in 15 cars ns 4044 ndyx 322008 r06
2/21 0322 out 47 cars ns 4044 csxt 243445 r09
2/20 0330 out 57 cars bnsf 4236 abox 52387
2/20 0134 in 43 cars bnsf 4236 gatx 89208
2/22 0311 in 65 cars up 7528 fbox 502243
2/22 0455 out 32 cars up 7528 csxt 481836
2/25 0147 in 39 cars ns 5242/5219 itdx 6948
2/25 0325 out 71 cars ns 5219/5242 djix 19450
2/27 0316 in 67 cars bnsf 8208/csxt 4401 tasx 7144
2/27 0537 out 70 cars bnsf 8208 rbox 38505
2/28 0752 out 110 cars csxt 4756 itfx 321003 r16
2/28 0501 in 50 cars csxt 4756 intx 77087 r09
3/1 0256 in 41 cars up 8435 fptx84068 r10
3/1 0424 out 50cars up 8435 rbox37280 r20

3/2 2353 in 30cars NS 5242 ndyx315541
3/3 0133 out 31cars NS 5242 abox50126
3/4 0229 in 47cars NS 5242/5219 csxt498711
3/4 0458 out 31cars NS 5219/5242 cefx32261
3/5 0202 in 23cars NS 5242/5219 nahx570422 r17
3/5 0334 out 31cars NS 5219/5242 gatx8489 r12
3/7 0142 in 42cars NS 3434 gatx29157
3/9 0549 in 34cars NS 5219/5242 gatx60172
3/9 0654 out 27cars NS 5242/5219 gatx7966
3/10 0009 in 32cars NS 5242 dbc201491
3/10 0152 out 14cars NS 5242 gatx69665
3/11 0433 out 49cars NS 3434 co351456
3/12 0043 in 36cars ns 3434 utlx671346
3/12 0156 out 33cars NS 3434 shqx5102
3/14 0133 in 25cars NS 3434 gatx3313
3/14 0249 out 23cars NS 3434 cefx32670
3/16 2339 in 0cars NS 5242/5219
3/17 0300 out 97cars NS 5219/5242 zvb76089
3/18 0255 in 75cars NS 5219/5242 dwc793774
3/18 0448 out 78cars NS 5242/5219 zvb6680
3/19 0109 in 69cars NS 5219/5242 tbox671454
3/19 0212 out 31cars NS 5242/5219 co351081
3/20 0100 in 49cars NS 5219/3434 zvb97605
3/20 0208 out 38cars NS 3434/5219 djx9738
3/21 0015 in 38cars NS 9734 cefx32670
3/21 0329 out 59cars NS 9734 rbox33594
3/22 0010 in 28cars up 6007 tasx7188
3/22 0137 out 35cars up 6007 tilx136358
3/23 0057 in 51cars NS 3434 zvb97047
3/23:0304 out 62cars NS 3434 aex21181
3/24 0054 in 29cars NS 3434 cefx82411
3/24 0342 out 44cars NS 3434 abox51818
3/26 0132 in 51cars NS 9020 intx47191
3/26 0238 out 44cars NS 9020 zvb16022
3/27 0134 in 35cars NS 3434/5242 gatx61200
3/27 0332 out 34cars NS 5242/3434 cbfx450786
3/28 0207 in 40cars NS 8443 djx9744
3/28 0414 out 44cars NS 8443 zvb97072
3/29 0126 in 46cars kcs4108/up7426 csxt709059 r07
3/29 0534 out 41cars up7426/kcs4108 csxt496291 r08



Jennifer E. Manz
Director, Labor Relations
500 Water Street
Jacksonville, FL 32202
(904) 518-0005
Jennifer_Manz@csx.com

April 6, 2021

Mr. Erik Belew
SMART-TD - Vice General Chairperson
12443 San Jose Blvd. Suite 701
Jacksonville, FL 32223

Re: Rougemere Yard Claims

Dear Erik,

This responds to our recent discussion of the Rougemere yard issue, in which the Union claimed that the abolishment of assignment Y122 in Rougemere Yard and use of a Conrail job to move cars between CSXT's Rougemere Yard and Conrail's Livernois Yard violate Rule 1 (Scope) and/or Rule 106 (Interchange) of the CSXT—SMART-TD collective agreement covering the former B&O Railroad.

We respectfully disagree, since the matter is governed not by the B&O Agreement, but rather by the Operating Agreement for the Detroit Shared Assets. The Operating Agreement was approved by the Surface Transportation Board in Finance Docket No. 33388, to utilize Conrail to perform certain "switching and yard services" for CSXT in the Shared Assets Area ("SAA"). CSXT's request that Conrail perform the work formerly performed by the Y122, i.e., transferring cars between Rougemere and Livernois Yards, with some industrial switching, was clearly contemplated and authorized by the Operating Agreement, including Section 3(d) (*excerpts attached*). Rougemere and Livernois Yards and the track between them are within the Detroit SAA as defined in the Agreement. Please note that Conrail does have trackage rights over CSXT track. The STB-approved Operating Agreement granted Conrail such trackage rights. See Sec. 3(c)(i).

Given the above, Rule 106 of the B&O Agreement is clearly inapplicable to Conrail. Moreover, no interchange is involved. Under the Operating Agreement (Sec. 3(e), Conrail acts as CSXT's agent, and the traffic remains in CSXT's account.

The STB's jurisdiction to approve such operating arrangements, and its approval of them, supersedes collective bargaining agreements negotiated under the Railway Labor Act. Accordingly, any impacts on CSXT employees from this operational change must be addressed under the New York Dock conditions and the New York Dock Implementing Agreement applying those conditions to the Conrail Transaction.

The Union's claim that the New York Dock Implementing Agreements do not authorize CSXT to use Conrail as its agent to transfer cars between Rougemere and Livernois Yards requires interpretation and application of the STB decision approving the Conrail Transaction, the Detroit SAA Operating Agreement, the New York Dock conditions and the Conrail Implementing Agreement. Exclusive jurisdiction to consider such claims lies with the STB and a committee established under Article I, Section 11 of the New York Dock conditions imposed in Finance Docket No. 33388. An arbitration board established under the Railway Labor Act would lack subject matter jurisdiction over all such disputes.

We understand, respect and share your interests in timely resolving matters that the parties may dispute. Therefore, CSXT is advancing these issues to a New York Dock Section 11 committee for adjudication, and appoints the undersigned as its member of the Committee. Please advise who will be the Organization's member.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Manz".

Jennifer E. Manz
Director, Labor Relations

Cc: Richard D. Lee – SMART-TD General Chairperson

Erik Belew

From: Richard Lee
Sent: Thursday, April 8, 2021 8:57 PM
To: Manz, Jennifer
Cc: Kevin Serres; Erik Belew; Joseph Ciemny
Subject: RE: Rougemere Yard LCAT Claims (UTU File: 696.106, 823, 696.31)
Attachments: 04.08.21 SMART TD Response to CSXT 04.06.21 ltr on Conrail Shared Assets....pdf;
Carrier Response to Rougmere Yard Claims.pdf

Importance: High

Jen:

Likewise, please see the attached letter in response to your letter. Be advised that we will also upload this letter as well as any other documents to support our arguments into lead file LCAT# 18-53433-T&E-BOUTU. As for the Carrier seeking to reopen FD 33388 under a Section 11 Committee, be advised that we do not agree to this avenue. Rather, as I explained in my letter, this matter is clearly a Section 3 dispute under the RLA; which occurred when the Carrier began to farm out the portions of the work belonging to the B&O/NMAD employees at CSXT.

Accordingly, while the Carrier is always free to pursue any avenue they deem appropriate, be advised that it will be a unilateral attempt by the Carrier at seeking a Section 11 Committee review. Consequently, unless resolved on-property in the near future, the Organization will plan to proceed forth under the provisions of the RLA that the on-property agreement(s) are not being complied with.

As always, please feel free to contact me with any discussion.

Respectfully,

Rick Lee
General Chairperson
SMART-TD B&O/NMAD General Committee



From: Manz, Jennifer [mailto:Jennifer_Manz@csx.com]
Sent: Thursday, April 8, 2021 11:55 AM
To: Erik Belew <ebelew@smartgca49.org>
Cc: Richard Lee <Rlee@smartgca49.org>
Subject: FW: Rougemere Yard LCAT Claims (UTU File: 696.31)

Hi Erik,

As follow-up to your vm yesterday, LCAT # 18-53433-T&E-BOUTU (Patrick Gay) was the file number identified as the lead claim. I have also uploaded Carrier's response/position on the issue under this file number. Let me know if this still works or if you want to identify a different file.

As communicated in Carrier's response dated 4/6/2021, CSXT is advancing the issue to a NYD Committee for final ruling. Please let me know who will be the Organization member.

Thanks.

Jennifer Manz
Director, Labor Relations
500 Water St. (J455)
Jacksonville, FL 32202
Cell: (904) 518-0005



From: Erik Belew <ebelew@smartgca49.org>
Sent: Wednesday, January 20, 2021 7:31 PM
To: Manz, Jennifer <Jennifer_Manz@csx.com>
Cc: Lee, Rick D. (Internet) <rlee@smartgca49.org>
Subject: [E] RE: Rougemere Yard LCAT Claims (UTU File: 696.31)

[E] - EXTERNAL SENDER

Use discretion when clicking links, opening attachments, or replying.

Jennifer,

As requested I suggest LCAT claim number 18-53433-T&E-BOUTU be our lead claim to attach any addendums. Let me know if you have any issues with this for discussion tomorrow.

Fraternally,

Erik Belew
Vice General Chairperson
SMART-TD B&O/NMAD General Committee



From: Erik Belew
Sent: Wednesday, January 20, 2021 6:32 PM
To: Manz, Jennifer <Jennifer_Manz@csx.com>
Cc: Richard Lee <Rlee@smartgca49.org>
Subject: Rougemere Yard LCAT Claims (UTU File: 696.31)

Jennifer,

As a brief synopsis of the what we are referring to as the Rougemere Yard claims discussed in multiple conferences as a result of the Detroit terminal yard assignment Y122 being abolished so that CSX could begin utilizing the subsidiary of CSX, Shared Assets to perform what is our work. On November 14, 2017, CSX in Crew Management Notice No. 146 abolished the Y122 with an effective date of November 18, 2018. The Claimant in the majority of the claims is Mr. PM Gay (ID# 199599) who was assigned to the Y122 on the effective date of the abolishment as he had been the incumbent on this assignment for a significant amount of time prior to the abolishment. The Y122 primary purpose were to transfer cars for interchange between the CSX owned and operated Rougemere Yard to the Shared assets yard of Livernois. Prior to the abolishment of the Y122 this work had been performed by CSX crews for multiple decades, including the period of time prior to the 1999 Conrail acquisition which resulted in FD 33388. Being that CSX relied solely on FD 33388 to base this position there was not any additional filings with the STB to legally allow this interchange. It is this offices position that CSX is in Violation of Rule 106, Article 3, The Conrail Implementing Agreement, and that the FD 33388 does not grant this authority to CSX and as a result are in violation of the STB requirements to operate in such a fashion.

As discussed in claims conference and to be fully transparent to resolve this current dispute I have attached excerpts from FD 33388 as requested that supports our position that the interchange work being currently done at Rougemere Yard is not supported by FD 33388 which former HDO Jason Floyd had stated solely allowed this work and that CSX Legal Department had previously reviewed. I further ask that you provide any internal correspondence from former HDO Floyd concerning this issue with CSX Legal to make it a matter of record if further adjudication is needed. Furthermore, it is our position that the Finance Docket does not grant CSX relief from its obligation to abide by the CBA regardless of what is stated in FD 33388. Simply stated CSX is bound by the Contract with its employees and its operations need to reflect what is contained in the Agreement unless changed through the RLA.

When CSX abolished the Y122 operating at Rougemere Yard and gave the work entirely to Shared Assets it violated our scope rules as the work is to be performed by CSX crews and not to be "farmed out" to another rail road which CSX happens to own a large portion along with the NS Rail Road. As we discussed Rule 106 is applicable in this instant case as well and is currently being violated due to CSX's loose compliance of the standards contained in the Rule to which despite numerous requests from this office to date have received zero correspondence in return for multiple years.

I have attached Rule 106 for your review and for the lawyers to review as well to once again be fully transparent in our position. As we discussed this office and from multiple General Chairmen have been seeking compliance with Rule 106 as this office has received little correspondence advising us what tracks etc. have been designated for interchange across CSX territory. Moreover CSX abolished the Y122 and are currently farming out our work at Rougmere Yard in its entirety to the Shared assets in violation of our scope Rule.

To summarize the position of the Carrier as previously given; FD 33388 grants the CSX the right to abolish prior CSX assignments at Rougemere Yard and thus no contractual violation has occurred.

To Summarize the Organizations position; FD 33388 does not give any such rights to the Carrier as the Finance Docket 33388 is merely a filing with the STB which grant the railroad rights to track age rights once approved but the in this instant case does not even grant CSX the right to operate their Shared Assets Rail road into Rougmere yard. Furthermore FD 33388 does not grant relief to CSX from the CBA nor to farm out our work to another rail road.

As you stated you are going to have the CSX lawyers review this information again.

Erik Belew
Vice General Chairperson
SMART-TD B&O/NMAD General Committee



R. D. Lee, General Chairperson
E. C. Kosinski, Asst. General Chairperson (E)
E. R. Belew, Vice General Chairperson
K. L. Serres, Vice General Chairperson
J. P. Ciemny, GCA Secretary



General Committee of Adjustment GO-049

April 8, 2021

(SENT VIA EMAIL and LCAT Upload)

Jennifer E. Manz
Director, Labor Relations
500 Water Street
Jacksonville, FL 32202
(904) 518-0005
Jennifer_Manz@csx.com

RE: LCAT# 18-53433-T&E-BOUTU (Conrail Detroit Shared Assets – Y122 Rougemere Claims)

Dear Mrs. Manz:

This will serve as a formal response to your letter dated April 6, 2021, dealing with claims arising out of deprivation of interchange and transfer work belonging to the CSXT employees on the B&O/NMAD seniority rosters. Whereas, the Carrier inaccurately states in their letter that the Organization only claims rights to such work under the Rule 1 (Scope) and Rule 106 (Interchange). However, to the contrary, be advised that our position is also founded on the language contained in Article 3 of the B&O Agreement. Further, our position is supported by the 1999 UTU/CSXT Conrail Implementing Agreements as well as the 2010 Northern Mid-Atlantic Agreement. Therefore, the agreement rules in place between SMART-TD (*formerly UTU*) and the Carrier are indeed applicable and binding upon the Carrier, and above any operating arrangement made in the Finance Docket No. 33388.

Moreover, your letter is also flawed and misleading wherein the Carrier claims that no interchange is involved with the rail traffic between CSX Rougemere Yard and the Livernois Yard on the Detroit Shared Assets ("SAA"). In fact, attached to this letter is a notice (**Attachment 1**) served by the Conrail Shared Assets to the SMART-TD Conrail Local Chairperson, stating, *inter alia*, that "[t]his interchange service will begin November 11, 2017". (Underscore added for emphasis). Correspondently, CSXT released Crew Management Notice No. 146, dated November 14, 2017, which abolished the Y122 (Rougemere Assignment) with an effective date of November 18, 2017 (**Attachment 2**). The Y122 handed the cars for the interchange traffic to the SAA. The fact that this job was abolished due to new

interchange arrangements with Conrail SAA, is clearly seen in the CSXT Crew Assignment Form as it noticeably indicates the Y122 is being abolished due to “Conrail Interchange” (**Attachment 3**).

Accordingly, the Organization disagrees that this is a case involving a review or intervention by a NYD Section 11 Committee pursuant to Finance Docket No. 33388. Rather, this dispute before us is clearly a dispute under Section 3 of the Railway Labor Act, as amended. In other words, the Organization is not seeking New York Dock Protections claiming the Y122 was abolished due to the CSX/NS/Conrail transaction, but rather because the Carrier has failed to adhere to equitable requirements of the property agreement(s) to provide the CSXT employees we represent with a portion of the interchange and transfer work that is theirs.

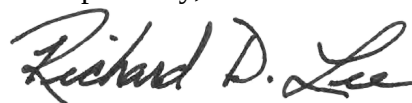
Consequently, based on the evidence at hand, it is our position that CSXT is bound by the property agreement(s) to afford CSXT employees their rights to such percentages of the transfer and interchange work to and from the SAA. Moreover, as your letter states, it’s noteworthy to mention that the Carrier is not burdened with any additional costs to allow CSXT employees their percentage of the transfer/interchange work as the Operating Arrangement under Section 3(e) of the Operating Agreement requires the Carrier to maintain these costs in CSXT’s account.

As for designating a member for the New York Dock Section 11 Committee, we again disagree this is applicable. However, if and when we are required to designate such member, we will do so when advised by the Surface Transportation Board.

Based on the foregoing, we again request that the Carrier promptly resolve the matter by making an equitable arrangement to reinstitute the interchange/transfer assignment to handle our portions the interchange and transfer work. However, if the Carrier refuses to comply with the agreement, we stand ready and prepared to submit the dispute to binding arbitration under the terms of the RLA.

If you have any questions or further discussion, please contact the undersigned. Otherwise, the Organization is agreeable to leaving the record open for further discussion for a period of thirty (30) days from the date of this letter if requested.

Respectfully,

A handwritten signature in black ink that reads "Richard D. Lee". The signature is written in a cursive, flowing style.

Richard D. Lee
General Chairperson



October 27, 2017

Mr. G. Karkoska
Local Chairman, SMART-TD
18605 Hillcrest St.
Livonia, MI 48152-4321

smart.local1477@gmail.com

Dear Mr. Karkoska,

Subject: Rougemere Yard Interchange

In accordance with Rule 68 of the Agreement between the parties, this is to notify you of Conrail's intent to institute interchange service at CSX's Rougemere Yard in Detroit, MI. The Westbound and Eastbound Main tracks at Rougemere Yard are designated for the cars arriving at Rougemere from Conrail and Tracks Number 7 and Number 8 Receiving are designated for the cars which Conrail crews will be picking up there. Notice of the designated interchange tracks will also be immediately placed in the Conrail Detroit SAA Operating Bulletin. This interchange service is scheduled to begin on November 11, 2017.

Please contact me if you have any questions regarding this change in service.

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. L. Bolton'.

T. L. Bolton
Director, Labor Relations

MCAI.MCBL	T&E DAILY MESSAGE		DATE 04/08/21 16:56			
OPTION: INQU	MESSAGE	DATE: 111417	NO: 146	PRT		PAGE 01
SHORT DESCRIPTION	:	DEDT YY122	ABOLISHED	SMART ID: CA28963		
EFFECTIVE DATE	:	2017-11-18 0001				
ASSIGNMENT DESCRIPTION	:	DET UP #301				
TRAIN ID	:	Y122				
ON DUTY MILEPOST	:	CH 1				
KIND OF SERVICE	:	YARD				
CRAFTS	:	ENGINEER, FOREMAN				
DAYS	:	MON	TUE	WED	THU	FRI SAT SUN
ASSIGNMENT	:	YY122	YY122	YY122	YY122	YR70 YR70 YY122
ON-DUTY TIME	:	0700	0700	0700	0700	0700 0700
WORKING LIMITS	:	YARD LIMITS				

NEXT FUNCTION:
MESSAGE :

Find: Select Action

List Crew Request History Record Approvals

Crew Request: CA28963

Requestor: Ewing, Michael

J2941

Request Date: 2017-11-11 10:35:59

Assigned To:

Status: Approved

Assignment Type:

- ☒ Yard
☐ Local
☐ Pool

Attachments

Effective Date: 2017-11-18 10:36:02

Region:

District: DE

Sub District: DT

Job Type: Y - Yard Switcher

Train ID: Y122

Abolished?

Abolishment Reason: CONRAIL INTEI

Yard Assignment Details

*Crew Terminal Milepost and Off Duty Milepost: CH 1

CTM City and State: DETROIT MI

*Train Departure Milepost: CH 1

TDM City and State: DETROIT MI

Train Arrival Milepost:

TAM City and State:

*Assignment Description: DET UP #301

*Working Limits: YARD LIMITS

*Reason for Change: CONVENTIONAL. YR70 WILL BE REPLACING YR50 AS THE RELIEF. OFF DUTY DAYS REMAIN THE SAME

CSRA Article 57: 4-Day and 3-Day Work Rest Assignment?

Customer Days of Service Change?

Train Order Required: N

*Bulletin Printer ID:

Kind Of Service: S - Yard

*Road Code: BO

Division: Chicago (CG)

*Yard Master Code: ROU

*TrainMaster Code Engineer:

*TrainMaster Code Conductor:

Terminal/Outlying:

- ☒ Terminal
☐ Outlying

*Additional Impact To

Service to Customer?

Train Profile?

None of the Above?

SubDivision: Filter 0 - 0 of 0

Download

Sub Division

There are no rows to display.

New Row

Erik Belew

From: Manz, Jennifer <Jennifer_Manz@csx.com>
Sent: Tuesday, April 20, 2021 9:16 AM
To: Richard Lee; Kevin Serres; Erik Belew; Joseph Ciemny
Subject: Re Rougemere Yard Claim Dispute (LCAT File 18-53433)
Attachments: 04.08.21 SMART TD Response to CSXT 04.06.21 ltr on Conrail Shared Assets....pdf; Carrier Response to Rougemere Yard Claims.pdf; Carrier Response 4.8.21 letter on Rougemere Yard Claim Dispute.pdf

Importance: High

Rick,

Attached is Carrier's response to your April 8, 2021 letter. Consequently, given you did not name a member by April 16, you have been designated as the Organization's member per Section 11.

Please let me know within the next 10 calendar days a convenient time to meet and discuss the selection of a neutral arbitrator.

Thanks.

*Jennifer Manz
Director, Labor Relations
500 Water St. (J455)
Jacksonville, FL 32202
Cell: (904) 518-0005*



From: Richard Lee <Rlee@smartgca49.org>
Sent: Thursday, April 8, 2021 8:57 PM
To: Manz, Jennifer <Jennifer_Manz@csx.com>
Cc: Serres, Kevin (Internet) <kserres@smartgca49.org>; Belew, Erik (Internet) <ebelew@smartgca49.org>; Ciemny, Joseph (Internet) <JCiemny@smartgca49.org>
Subject: [E] RE: Rougemere Yard LCAT Claims (UTU File: 696.106, 823, 696.31)
Importance: High

[E] - EXTERNAL SENDER

Use discretion when clicking links, opening attachments, or replying.

Jen:

Likewise, please see the attached letter in response to your letter. Be advised that we will also upload this letter as well as any other documents to support our arguments into lead file LCAT# 18-53433-T&E-BOUTU. As for the Carrier seeking to reopen FD 33388 under a Section 11 Committee, be advised that we do not agree to this avenue. Rather, as I explained in my letter, this matter is clearly a Section 3 dispute

under the RLA; which occurred when the Carrier began to farm out the portions of the work belonging to the B&O/NMAD employees at CSXT.

Accordingly, while the Carrier is always free to pursue any avenue they deem appropriate, be advised that it will be a unilateral attempt by the Carrier at seeking a Section 11 Committee review. Consequently, unless resolved on-property in the near future, the Organization will plan to proceed forth under the provisions of the RLA that the on-property agreement(s) are not being complied with.

As always, please feel free to contact me with any discussion.

Respectfully,

Rick Lee
General Chairperson
SMART-TD B&O/NMAD General Committee



From: Manz, Jennifer [mailto:Jennifer_Manz@csx.com]
Sent: Thursday, April 8, 2021 11:55 AM
To: Erik Belew <ebelew@smartgca49.org>
Cc: Richard Lee <Rlee@smartgca49.org>
Subject: FW: Rougemere Yard LCAT Claims (UTU File: 696.31)

Hi Erik,

As follow-up to your vm yesterday, LCAT # 18-53433-T&E-BOUTU (Patrick Gay) was the file number identified as the lead claim. I have also uploaded Carrier's response/position on the issue under this file number. Let me know if this still works or if you want to identify a different file.

As communicated in Carrier's response dated 4/6/2021, CSXT is advancing the issue to a NYD Committee for final ruling. Please let me know who will be the Organization member.

Thanks.

Jennifer Manz
Director, Labor Relations
500 Water St. (J455)
Jacksonville, FL 32202
Cell: (904) 518-0005



From: Erik Belew <ebelew@smartgca49.org>
Sent: Wednesday, January 20, 2021 7:31 PM

To: Manz, Jennifer <Jennifer_Manz@csx.com>
Cc: Lee, Rick D. (Internet) <rlee@smartgca49.org>
Subject: [E] RE: Rougemere Yard LCAT Claims (UTU File: 696.31)

[E] - EXTERNAL SENDER

Use discretion when clicking links, opening attachments, or replying.

Jennifer,

As requested I suggest LCAT claim number 18-53433-T&E-BOUTU be our lead claim to attach any addendums. Let me know if you have any issues with this for discussion tomorrow.

Fraternally,

Erik Belew
Vice General Chairperson
SMART-TD B&O/NMAD General Committee



From: Erik Belew
Sent: Wednesday, January 20, 2021 6:32 PM
To: Manz, Jennifer <Jennifer_Manz@csx.com>
Cc: Richard Lee <rlee@smartgca49.org>
Subject: Rougemere Yard LCAT Claims (UTU File: 696.31)

Jennifer,

As a brief synopsis of the what we are referring to as the Rougemere Yard claims discussed in multiple conferences as a result of the Detroit terminal yard assignment Y122 being abolished so that CSX could begin utilizing the subsidiary of CSX, Shared Assets to perform what is our work. On November 14, 2017, CSX in Crew Management Notice No. 146 abolished the Y122 with an effective date of November 18, 2018. The Claimant in the majority of the claims is Mr. PM Gay (ID# 199599) who was assigned to the Y122 on the effective date of the abolishment as he had been the incumbent on this assignment for a significant amount of time prior to the abolishment. The Y122 primary purpose were to transfer cars for interchange between the CSX owned and operated Rougemere Yard to the Shared assets yard of Livernois. Prior to the abolishment of the Y122 this work had been performed by CSX crews for multiple decades, including the period of time prior to the 1999 Conrail acquisition which resulted in FD 33388. Being that CSX relied solely on FD 33388 to base this position there was not any additional filings with the STB to legally allow this interchange. It is this offices position that CSX is in Violation of Rule 106, Article 3, The Conrail Implementing Agreement, and that the FD 33388 does not grant this authority to CSX and as a result are in violation of the STB requirements to operate in such a fashion.

As discussed in claims conference and to be fully transparent to resolve this current dispute I have attached excerpts from FD 33388 as requested that supports our position that the interchange work being currently done at Rougemere Yard is not supported by FD 33388 which former HDO Jason Floyd had stated solely allowed this work and that CSX Legal Department had previously reviewed. I further ask that you provide any internal correspondence from former HDO Floyd concerning this issue with CSX Legal to make it a matter of record if further adjudication is needed. Furthermore, it

is our position that the Finance Docket does not grant CSX relief from its obligation to abide by the CBA regardless of what is stated in FD 33388. Simply stated CSX is bound by the Contract with its employees and its operations need to reflect what is contained in the Agreement unless changed through the RLA.

When CSX abolished the Y122 operating at Rougemere Yard and gave the work entirely to Shared Assets it violated our scope rules as the work is to be performed by CSX crews and not to be "farmed out" to another rail road which CSX happens to own a large portion along with the NS Rail Road. As we discussed Rule 106 is applicable in this instant case as well and is currently being violated due to CSX's loose compliance of the standards contained in the Rule to which despite numerous requests from this office to date have received zero correspondence in return for multiple years.

I have attached Rule 106 for your review and for the lawyers to review as well to once again be fully transparent in our position. As we discussed this office and from multiple General Chairmen have been seeking compliance with Rule 106 as this office has received little correspondence advising us what tracks etc. have been designated for interchange across CSX territory. Moreover CSX abolished the Y122 and are currently farming out our work at Rougmere Yard in its entirety to the Shared assets in violation of our scope Rule.

To summarize the position of the Carrier as previously given; FD 33388 grants the CSX the right to abolish prior CSX assignments at Rougemere Yard and thus no contractual violation has occurred.

To Summarize the Organizations position; FD 33388 does not give any such rights to the Carrier as the Finance Docket 33388 is merely a filing with the STB which grant the railroad rights to track age rights once approved but the in this instant case does not even grant CSX the right to operate their Shared Assets Rail road into Rougmere yard. Furthermore FD 33388 does not grant relief to CSX from the CBA nor to farm out our work to another rail road.

As you stated you are going to have the CSX lawyers review this information again.

Erik Belew
Vice General Chairperson
SMART-TD B&O/NMAD General Committee





Jennifer E. Manz
Director, Labor Relations
500 Water Street
Jacksonville, FL 32202
(904) 518-0005
Jennifer_Manz@csx.com

April 20, 2021

Mr. Richard D. Lee
SMART-TD General Chairperson
12443 San Jose Blvd. Suite 701
Jacksonville, FL 32223

Re: Rougemere Yard Claim Dispute

Dear Richard:

This responds to the Organization's letter dated April 8, 2021.

The Organization states that its position is based on Article 3 of the B&O Agreement as well as Rules 1 and 106 and on the 1999 UTU/Conrail Implementing Agreements and the 2010 Northern Mid-Atlantic Agreement. The Organization attaches additional documents in support of the Organization's argument that CSXT's use of Conrail violated Rule 106.

The attached documents do not support the Organization's Rule 106 argument. As the Carrier previously explained, the B&O Agreement, including Rule 106, does not apply to work performed by Conrail. In addition, Rule 106 uses the term "interchange" in connection with the exchange of cars between CSXT and a "foreign carrier." When interchange occurs between CSXT and a foreign carrier, the cars move from the account of one carrier to the other. As explained, under the STB's control authorization and the Detroit Shared Assets Operating Agreement, Conrail does not act as a "foreign carrier." Rather, Conrail is an affiliate of CSXT and acts as an agent for CSXT (or NSR) in handling cars within the SAA. As stated in the Operating Agreement, there is no interchange between CSXT and Conrail as that term is used in Rule 106. The Organization has also failed to show any "new interchange arrangements with Conrail SAA." The October 27, 2017 notice from the Conrail Director or Labor Relations to a Conrail Local Chairman was using the term "interchange" in a different sense—the Conrail job would simply move cars from Livernois Yard to Rougemere Yard, all while in CSXT's account. Likewise, CSXT Crew Management Notice No. 146 does not show that this job was involved in interchange service within the meaning of Rule 106 for the same reasons.

The Organization apparently is relying on language in Article 3(e) of the B&O Agreement that "Effort will be made to give Baltimore and Ohio yardmen their percentage of all transfer work between foreign lines and The Baltimore and Ohio Railroad." Again, Article 3(e) addresses the transfer of cars between CSXT and a "foreign carrier," and Conrail is not acting as a foreign

carrier here. Similarly, the transfer of cars between Rougemere and Livernois Yards is not a transfer of cars between CSXT and “foreign lines” because it occurs within the SAA. In that regard, the Organization is mistaken that there is “transfer and interchange work to and from the SAA.” Y122 and the Conrail job operate entirely with the Detroit SAA. Article 3 is also limited to yard movements and is not a firm requirement.

The Organization’s April 8, 2021 letter makes clear that its arguments based in the B&O Agreement are an effort to obtain an “equitable” share of the work of moving cars between Rougemere and Livernois Yards. New York Dock implementing agreements sometimes make provision for the sharing of work between employees of two or more carriers. However, the 1999 Conrail New York Dock Implementing Agreement and the 2010 NOMAD New York Dock Implementing agreement do not provide for an equitable sharing of work under the Detroit SAA Operating Agreement when CSXT utilizes Conrail for “switching and yard services.” Such a requirement would conflict with CSXT’s right under that Agreement to utilize Conrail for such services. Therefore, there is no basis for the Organization’s demand that CSXT make “an equitable arrangement to reinstitute the interchange/transfer assignment to handle our portions of the interchange and transfer work.” In effect, the Organization is seeking an amendment to the 1999 New York Dock Implementing Agreement.

The Organization’s April 8 letter reiterates its disagreement that Section 11 applies and states that “if and when we are required to designate such a member, we will do so when advised by the Surface Transportation Board.” CSXT’s April 6 letter was notice to the Organization that CSXT has referred this dispute to arbitration by a Section 11 Committee and appointed the undersigned as the Carrier member. Section 11 requires the Organization to designate its member within ten days of CSXT’s request. Consequently, given you did not name a member by April 16, you have been designated as the Organization’s member per Section 11.

Please provide me within the next 10 calendar days a convenient time to meet and discuss the selection of a neutral arbitrator.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Manz".

Jennifer E. Manz
Director, Labor Relations

Cc: Erik Belew – SMART-TD Vice General Chairperson

R. D. Lee, General Chairperson
E. C. Kosinski, Asst. General Chairperson (E)
E. R. Belew, Vice General Chairperson
K. L. Serres, Vice General Chairperson
J. P. Ciemny, GCA Secretary



General Committee of Adjustment GO-049

April 29, 2021
SMART-TD File: 18-53433-T&E-BOUTU
CSXT File: 18-53433-T&E-BOUTU
NMB CODE: 102

Ms. Linda Gathings
Arbitration Program Specialist
National Railroad Adjustment Board First Division
844 North Rush Street, Room 944
Chicago, IL 60611-2092

NATIONAL RAILROAD ADJUSTMENT BOARD FIRST DIVISION

NOTICE OF INTENT

This is to serve notice, as required by the June 23, 2003 Uniform Rules of Procedure of the National Railroad Adjustment Board, of the Organizations intent to file a Submission in regard to a dispute between the SMART Transportation Division (*formally* UTU) B&O General Committee of Adjustment and CSX Transportation, as outlined below.

This dispute involves the claims of E. D. Gay, CSX ID# 199599, encompassing CSXT LCAT Numbers: 20-81382-T&E-BOUTU, 19-947748-T&E-BOUTU, 19-47369-T&E-BOUTU, 18-99293-T&E-BOUTU, 18-62675-T&E-BOUTU, 18-48329-T&E-BOUTU, 18-83412-T&E-BOUTU, 18-53433-T&E-BOUTU, whereas:

“Allow the a basic eight (8) hour day penalty due to CSX’s willful violation of the CBA, in particular but not limited to the Scope Rules/Articles, Rule 59, Article 3, and Rule 106, BLE 1971 Interchange agreement. The violation of the CBA has eliminated a prior right employees ability to work an assignment of his choosing belong to CSX employees and was illegally “farmed out” to Conrail SA to which they are not entitled to, in an attempt to eliminate assignment to reduced costs for the stockholders. Consider this claim as notice that this is a continuous claim starting on November 19, 2017 and will be continued until resolved under the RLA. If CSX chooses to deny and not resolve the issue they do so at their own peril and should pay all claims in the full amount.”

This dispute is submitted to the First Division under NMB Code 102 for final resolution.

Sincerely,



Richard D. Lee

General Chairperson

cc:

David Wier, Jr., Vice President SMART – Transportation Division
Jamie C. Modestit, Vice President SMART – Transportation Division
Jennifer Manz, CSXT Director of Labor Relations