

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42513  
Docket No. MW-42261  
17-3-NRAB-00003-130053**

**The Third Division consisted of the regular members and in addition Referee Patrick Halter when award was rendered.**

**PARTIES TO DISPUTE:** ( **Brotherhood of Maintenance of Way Employees Division -**  
( **IBT Rail Conference**  
( **CP Rail System (former Delaware and Hudson**  
( **Railway Company)**

**STATEMENT OF CLAIM:**

**“Claim on behalf of the System Committee of the Brotherhood:**

- (1) The Agreement was violated when the Carrier assigned outside forces to perform Maintenance of Way work (dismantle the Rip Track Office trailer and the Rip Track locker room container) at Binghamton Yard in Conklin, New York on June 17, 18, 21, 22, 23, 24, and 25, 2010 (Carrier’s File 8-00811 DHR).**
- (2) The Agreement was further violated when the Carrier failed to provide a proper advance notice of its intent to contract out the aforesaid work or make any good-faith efforts to reduce the incidence of subcontracting and increase the use of Maintenance of Way forces as required by Rule 1 and Appendix ‘H’.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants S. Hewitt, T. Delamater and T. Kovaleski shall now each be compensated for a total of eight (8) hours at their respective straight time rates of pay for each date of June 17, 18, 21, 22, 23, 24 and 25, 2010.”**

**FINDINGS:**

**The Third 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 employee 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.

The record shows that the Rip Track office (trailer) and Rip Track storage/locker room (rail shipping container) were to be dismantled and replaced with new facilities. The force was scheduled to perform this work; however, prior to the work commencing a wind storm tore the roof of the Rip Track office leaving the interior walls exposed to the outside environment. The Carrier's industrial hygienist inspected the office and the storage/locker room and discovered the growth of mold spores. The Carrier sealed the storage/locker room and those employees using the storage/locker room were relocated to the locomotive shop. Based on the industrial hygienist's discovery of mold spores, the Carrier contacted Alicon Environmental Services (AES) to provide mold-spore remediation services in the dismantling and removal of the Rip Track office and rail shipping container which was the storage/locker room.

On July 18, 2010, the Organization filed a claim asserting that the Carrier contracted work without notice and conference. Instead of using the force to dismantle the office and storage/locker container, the Carrier used an outside contractor. According to the Organization, this type of work is customarily and historically performed by the force under Rule 1.1 (inspection, repair and maintenance of buildings and other structures).

In denying the claim on August 12, 2010, the Carrier states that the force is not trained, qualified and certified in remediation services when dismantling a spore mold office and container and removing the debris. Air testing and disposal are not customarily and historically performed by the force which means the claimed work is not scope covered and subject to notice prior to contracting.

An appeal was filed on October 10, 2010 contesting specialized work and expertise given an employee's statement attesting to confined-space air quality testing by the force. The Carrier denied the appeal on August 2, 2011, reiterating assertions in its claim denial and requesting documentation of the employee's

training and qualifications for evaluating and remediating the mold-infested trailer and container.

Following conference on February 10 and March 1, 2012 and the Organization's post-conference letter dated March 28, 2012, this matter remains deadlocked and is before the Board for a final decision.

The initial issue is whether the work is scope-covered; Rule 1.3 requires notice prior to contracting out work "within the scope of the Agreement." On-property Third Division Awards 38147, 39490 and 41478 submitted by the Organization confirm notice is required for scope covered work. In the cases relied upon by the Organization there was no dispute that the work is scope covered unlike the instant claim where the Carrier asserts the claimed work is not within the scope.

Having reviewed the record, the Board finds that the claimed work involves remediation services provided in conjunction with dismantling and removing the trailer and container. Although the Organization disputes the Carrier's assertion that the industrial hygienist discovered growth of mold spores, the onsite presence of AES, a remediation services firm, is prima facie evidence of environmental concerns on property. Further evidence is that the storage / locker room (rail shipping container) was sealed off.

The Organization submitted a statement from an employee disputing the removal and disposal of spore-mold materials as posing health risks. In this regard, the Organization asserts the contractor's personnel were observed not wearing personal protective equipment and the debris was placed in the garbage dumpster. As noted in Third Division Award 40784 where the Carrier did not issue notice when it used an outside force to remove and dispose of possible contaminated material, "the Board is not in a position to second-guess what appears to have been a good-faith determination" by the Carrier that the claimed work involved contaminated, if not toxic, material which is not work customarily handled by the force. In this situation, the Carrier engaged a remediation services firm for the work. The Organization disagrees with that decision since the force was initially scheduled to dismantle the office and container but that was before the discovery of mold spores. AES was responsible for removing and dismantling spore mold from the Carrier's property. There is insufficient evidence in this record to find that the force has performed remediation work of this nature.

Based on the record established in this proceeding, the claimed work was not “within the scope of the Agreement.” Thus, notice was not required. The claim is denied.

**AWARD**

Claim denied.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

Dated at Chicago, Illinois, this 11th day of January 2017.