

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42763
Docket No. MW-43056
17-3-NRAB-00003-150213**

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference**

PARTIES TO DISPUTE: (

**(CSX Transportation, Inc. [former Seaboard System
(Railroad]**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Woodards Welding Works) to perform Maintenance of Way and Structures Department work (field welds) at various locations in the High Rock Yard in Denton, North Carolina on the Florence Division on July 12, 15, 22, 26 and 29, 2013 (System File B18818913/2013-150321 WSS).**
- (2) The Agreement was further violated when the Carrier failed to provide advance notice and failed to confer and reach an understanding setting forth the conditions under which the aforesaid work would be performed as required by Rule 2 and the December 11, 1981 National Letter of Agreement.**
- (3) As a consequence of the violations referenced in Parts (1) and/or (2) above, Claimants R. Tucker and C. Slater shall “*** each be compensated with (40) hours straight time, and (5) hours time and one-half; at their appropriate rates of pay in effect on the dates claimed ***”**

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.

On April 12, 2013, the Carrier issued the following letter to the Organization regarding its intent to contract out certain welding work:

“Re: WS-04-2013-002444 – Maintenance on switch point and frogs, Various Locations, NC (Winston Salem Southbound)”

Dear Sirs,

This letter is notification, pursuant to the July 1, 1985 Agreement between the BMWE and the former Seaboard System Railroad (now CSX Transportation) of the Carrier’s intent to contract for the maintenance of switch points and frogs at various mileposts on the WSSB. The work is scheduled to begin on or about April 29, 2013.

WSSB/HTPD needs to contract out this work because its magnitude exceeds WSSB capabilities during the timeframe of the project. WSSB/HPTD does not have sufficient trained manpower and equipment to complete the project in the time frame necessary.

Arrangement for conference to discuss this matter, if such is desired by the Organization, can be made by contacting Rob Miller at . . .”

The Organization did not request a conference to discuss the notice until May 3, 2013. It is the Organization’s contention, though, that the work that is the subject

of the instant claim did not involve the maintenance of switch points and frogs. Rather, it alleges that the contractor performed field welds, which it explains involves the welding together of rail ends. Consequently, the Organization argues the parties had not held a conference to discuss the contracting out of this work.

The Carrier has responded that the work was contracted out because it does not have qualified welders on this particular property, which is the former Winston Salem Southbound Railroad and has only ten employees in the maintenance of way craft. It asserts there is insufficient welding work on this property to justify the hiring of welders. The Carrier has also denied that this work was field welding, and that there is no evidence in the record that it was.

The gravamen of the Organization's claim is that the contractor performed field welding, and the Carrier failed to serve a notice and hold a conference to discuss this work. In light of the Carrier's denial that field welding was performed, the Organization has the burden of proving that the work did, in fact, consist of field welding. The mere assertion that field welding was performed is not sufficient to meet this burden of proof. Accordingly, we cannot find that the Carrier violated the Agreement.

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 25th day of September 2017.