

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42793  
Docket No. MW-42550  
17-3-NRAB-00003-140223**

**The Third Division consisted of the regular members and in addition Referee Dennis J. Campagna when award was rendered.**

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

**PARTIES TO DISPUTE: (**

**(National Railroad Passenger Corporation (AMTRAK)**

**STATEMENT OF CLAIM:**

**"Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier assigned outside forces to perform Maintenance of Way Bridge and Building maintenance work (spread topsoil and planting shrubs and vegetation) at the Maintenance of Way base in Hamden, Connecticut on September 26 and 27, 2012 (Carrier's File NEC-BMWE-SD-5160 AMT).**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with advance written notice of its plans to contract out said work or make a good-faith attempt to reach an understanding concerning said contracting as required by the Scope Rule.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants P. Martin and D. Bouteiller, Jr. shall now each be compensated for sixteen (16) hours at their applicable rates of pay."**

**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.

Claimants P. Martin and D. Bouteiller have established and hold seniority in the Maintenance of Way Track and Bridge and Building Department, respectively. The Organization filed a timely claim dated November 6, 2012 on behalf of the Claimants alleging that the Carrier improperly, and in violation of the Scope Rule, hired an outside contractor to perform general landscaping work on September 26 and 27, 2012. The Organization also asserts that the Carrier violated the Scope Rule when it failed to give the General Chairman the required advance notice of its plan to contract out the work in question, and to hold a conference with the General Chairman to discuss this work.

The record reflects that on September 1, 2011, the Carrier served an "Informational Notice" to the Organization advising them of the Carrier's intent to engage the services of a qualified contractor to install storm water controls at the New Haven MOW Base in Hamden, CT. The Organization was advised that the purpose of this project was to install storm water controls to prevent continued erosion and to reduce the potential for contaminants associated with industrial activities from impacting the Quinnipiac River. The record also revealed the work to be performed by the contractor, which work included the selection of the vegetation and gravel, installation of the vegetated strip with gravel diaphragm and gravel berm, and the seeding and mulching of the filter strip with select salt tolerant vegetation. Finally, and significantly, the record also reflects that the Organization did not file an exception to the performance of this work. The instant claim by the Organization was prompted by the failure of the filter strip vegetation installed in 2011 to handle the frequent flooding conditions of the river and as a result, the outside contractor who warranted their work revisited the site to make several improvements which included the addition of more topsoil, installing a protective

stone berm, selecting a hardier seed mix, and installing some wetland plugs of salt meadow to reestablish vegetation. Under these circumstances, we find that the work performed by the outside contractor in 2011 was directly related to the work they performed in 2011 and in reality, an extension of such work. Accordingly, the Board cannot find that the Carrier violated the Scope Rule as asserted by the Organization in this case, and as a result, the instant claim will be dismissed.

**AWARD**

Claim dismissed.

**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 28th day of November 2017.