

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 43008
Docket No. MW-43837
18-3-NRAB-00003-160406

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(
(Delaware Hudson Railway Company

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 work (excavation, grading, drainage, culvert repair and install, brush cutting and all associated site work) at Mile Post 602.9 beginning on September 11, 2014 and continuing through September 19, 2014 (Carrier’s File 8-01043 DHR).
- (2) The Agreement was further violated when the Carrier failed to comply with the advance notification and conference provisions in connection with the Carrier’s intent to contract out the aforesaid work or to 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 W. Scott, A. Gasper, M. Barown and J. Johnson shall now each be compensated for a total of fifty-six (56) hours at their respective straight time rates of pay and for seventy-two (72) hours at their respective overtime 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.

Beginning on September 11, 2014 and continuing through September 19, 2014, the Carrier outsourced excavation, grading, drainage, culvert repair and install, brush cutting and all associated site work at Mile Post 602.9 on the Freight Subdivision near Sanataria, New York. The Organization protested, contending that the bargaining unit was entitled to the outsourced work, and the collective bargaining Agreement had been violated.

The Carrier presented the Organization with a letter dated July 16, 2014 stating it intended to contract out, among other work, the replacement of a culvert at Mile Post 602.9 using the preferred jack and bore method. It concludes a good faith attempt to reach an understanding was attempted.

The Carrier explained that the jack and bore method requires not only an understanding of environmental concerns such soil conditions and water patterns, but also mandates expertise regarding potential problems which may occur in the process. It notes that its forces lack experience in the methodology, and therefore do not possess the necessary expertise to address the type of problems which may occur.

In the Carrier's view, the jack and bore method also requires a level of experience and expertise in the operation of required machinery that can only be gained through frequent repetition. The Carrier contends it does not expect to install an adequate number of culverts to enable its forces to develop sufficient

expertise to complete the installations safely and effectively. It notes it is not required to hire additional forces or purchase additional equipment for peaks and/or short-term projects, such as that involved in the instant matter. The Carrier concludes its actions have been proper under the parties' Agreement.

The Organization maintains the Carrier must show that it attempted to reduce the incidence of subcontracting and increase the use of Maintenance of Way forces prior to engaging in a contracting out process. It asserts that culvert installation and repair have historically been accomplished with the Carrier's employes, using overtime and temporary hires. In its view, there was no justifiable reason for not handing this project the same way. It argues there is no reason to insist on the jack and bore method. In its assessment, simply changing the work method of scope work does not alter the nature of the work or its status as covered work under the scope rule.

There is no question but that culvert installation and repair have historically been considered scope work to be performed by BMWWE represented employee. However, in the opinion of the Board, the jack and bore method is distinguishable in that different skills, duties and equipment are necessary. It is new technology for the Carrier, and as such, BMWWE represented employes are not experienced or skilled in performance of the duties involved.

The nature of the jack and bore approach to culvert installation and repair involves risks that do not exist in tradition approaches to the work. In the Board's assessment, knowledge and competence regarding line and grade, soil conditions, attributes of water flow and related matters is not required at a comparable level in traditional culvert installation and repair, whereas with jack and bore, such competencies are essential to avoid failure of the project. In addition, jack and bore methodology requires operation of boring equipment and other required machinery which BMWWE represented employes are not experienced in operating. As a result, the Board does not find a contractual mandate that the work be assigned to Maintenance of Work employes.

This decision is rooted in the context of the Carrier's assertion that it anticipates few culverts will require the jack and bore method; it does not address in the circumstance of the jack and bore method becoming more prevalent than an occasional, short term project.

Form 1
Page 4

Award No. 43008
Docket No. MW-43837
18-3-NRAB-00003-160406

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 29th day of March 2018.