

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43131
Docket No. MW-43305
18-3-NRAB-00003-150485**

The Third Division consisted of the regular members and in addition Referee Amedeo Greco when award was rendered.

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

**PARTIES TO DISPUTE: (
(CSX Transportation, Inc.**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when beginning February 10, 2014 through March 10, 2014 and continuing when the Carrier used four (4) employees of the outside contractor Loram to operate a ditching machine in order to perform the Maintenance of Way work of cleaning and installing ditches along the right of way (System File B17808014/2014-165619 CSX).**
- (2) The claim* referenced in Part (1) above, listed for discussion by General Chairman D. Albers by letter dated June 17, 2014 and discussed in conference on October 31, 2014, shall now be allowed as presented because the claim was not disallowed in accordance with Rule 24(b).**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants J. Wilder and C. Majchrzak shall now each be paid for an equal proportion of ‘... the amount of man-hours expended by the outside contractor employees until this violation stops. Presently we are claiming that Claimants J. Wilder, ID#237711, and C. Majchrzak, ID#573261, receive an equal proportion of the (680) straight time man hours and the (328) time and one half man hours at their appropriate rates of pay in effect during the period claimed; please advise when this violation stopped ***.’”**

The initial letter of claim will be reproduced within our initial submission.

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 Carrier hired outside contractor Loram to operate a ditching machine along the Carrier's right of way.

The Organization states that the Carrier violated the Memorandum of Agreement, ("MOA"), when it used outside personnel to perform that work.

The Carrier states that the Organization has failed to meet its burden of proving that outside personnel performed bargaining unit work.

The Carrier is correct and the Claim is denied.

AWARD

Claim denied.

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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 30th day of May 2018.