

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43133
Docket No. MW-43318
18-3-NRAB-00003-150530**

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 on behalf of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when, beginning January 13, 2014 through and including January 28, 2014, the Carrier assigned outside forces (Loram) to perform ditching work with the Loram High Speed Production Ditcher on the Florence Division on the Raleigh/Rocky Mount Seniority District between Mile Posts SA 36.0 and SA 77.0 without notifying the General Chairman in advance of its intention to do so (System File B17176714/2014-163692 CSX).**
- (2) The Agreement was violated when, beginning January 13, 2014 through and including January 28, 2014, the Carrier assigned outside forces (Loram) to perform ditching work with the Loram High Speed Production Ditcher on the Florence Division on the Raleigh/Rocky Mount Seniority District between Mile Posts SA 36.0 and SA 77.0 using five (5) contractor employees.**
- (3) As a consequence of the violation referred to in Parts (1) and/or (2) above, Claimants S. Mayle, J. Taylor, J. Carter, C. Daniel and P. Daniel shall now each be compensated for ninety-four (4) hours’ straight time and sixty (60) hours’ overtime at their respective hourly and overtime rate.”**

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 which used outside personnel to use a ditcher to perform ditching work between January 13, 2014 to January 28, 2014. The Carrier provided Notice of said work to the Organization on January 21, 2014, after the work began.

The Organization states that the Carrier failed to provide timely Notice of said work on the property because the Notice was provided after the work began in violation of the September 1, 1999, Agreement.

The Carrier argues that its Notice was proper even though it was given after the work started. It also states that only two outside operators used the ditching machine and that any possible back pay should be based on the hours they worked.

Said Notice is very important because it enables the Organization to know about the Carrier's plans to contract out work before it occurs and to be "made aware of the business justifications for contracting out, the reasons why management has invoked its ability to contract out in the specific instance. . ." (PLB No. 6510, Goldstein Award, p. 33).

The Carrier's failure to provide such timely Notice therefore deprived the Organization from receiving such valuable information in violation of the MOA.

Back pay therefore is to be awarded to the Claimants based upon the total number of hours worked by the two outside personnel.

AWARD

Claim sustained in accordance with the findings

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 30th day of May 2018.