

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43139
Docket No. MW-43324
18-3-NRAB-00003-150540**

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 the Carrier assigned outside forces (Tri-State Rail Service) to perform Maintenance of Way work (track and right of way maintenance and repair and related work) at Mile Post CFJ 4.2 at Mousie, Kentucky on the Ashland Seniority District of the Appalachian Division beginning on February 5, 2014 and continuing (System File G29601114/2014-163255 CSX).**
- (2) The Agreement was further violated when the Carrier failed to notify the General Chairman, in writing, as far in advance of the date of the above-referenced contracting transaction as was practicable and in any event not less than fifteen (15) days prior thereto or make a good-faith effort to reduce the incidence of subcontracting and increase the use of its Maintenance of Way forces as required by the Scope Rule and the December 11, 1981 National Letter of agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants J. Hays, J. Rolland, K. Murphy, J. Hurt and C. Baker shall now each ‘... be paid an equal amount of the total hours worked by each of the contractor’s employees, from the beginning of this violation until the issue is corrected, divided equally amongst the Claimants at their respective straight and 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.

The Carrier used outside personnel to perform work at its Mousie, Kentucky property.

The Organization states that the Carrier only has provided one page of the lease and that the Organization has not received any documentation showing that the Carrier can hire outside personnel to perform the disputed work.

The Carrier states that the property is no longer in its possession and that it has provided the Organization with written statements from Division Engineer Martin Ramsey and Staff Engineer Chris Childers stating that property is no longer under the Carrier's possession.

The disputed lease, however, does not mention the Carrier by name. It, instead, only refers to the Kentucky Fuel Corporation and Council of Kentucky, Inc. There thus is no document showing that the Carrier leases this property to an outside party.

Absent such documentation, the Carrier has failed to prove that it does not control the property.

AWARD

Claim sustained.

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.