

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43472  
Docket No. MW-43902  
19-3-NRAB-00003-160729**

**The Third Division consisted of the regular members and in addition Referee David P. Twomey 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 on February 2, 2015 through March 27, 2015 and continuing, the Carrier assigned outside forces (Redstone International) to perform various B&B Subdepartment work including but not limited to headwall and or retaining wall construction/building work within the Newell Yard limits at or in the vicinity of Mile Posts PLM 46.0 and PLM 48.0 within the Three Rivers Seniority District of the Baltimore Division (System File A01804915/2015-185211 CSX).**

**(2) As a consequence of the violation referred to in Part (1) above, Claimants B. Slone, R. Wagner, R. Firestone, D. Leister, E. Ference, D. Berga and A. Leister shall now each be allowed:**

**‘... an equal proportion of the (5,280) man-hours, consisting of (3,520) straight time man-hours and (1,760) time and one-half man-hours is now being claimed on behalf of the (7) named Claimants at each of the Claimants appropriate rates of pay in effect during the period claimed.**

**‘This is considered as a continuing violation and therefore the rights of the Claimants shall be protected with the filing of this claim for the additional straight time and overtime hours**

expended by the outside contractor employees beyond those listed herein, until this violation stops \*\*\*'.””

**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.

On September 4, 2014, the Carrier sent the Organization an informational notice setting forth the Carrier's intent to have contractors install micropiles five feet center to center of 9.635 x 0.545 N80, steel pipe anchored with concrete grout and a drilled anchor retaining wall system between mileposts PLM 45.8 and PLM 47.8. On March 31, 2015, the Organization filed a claim on behalf of seven claimants for the work performed by the contractors installing the micropiles in the vicinity of Milepost PLM 46.0 and Milepost PLM 48.0.

The Organization contends that the work performed by the contractor is regularly performed by BMW-represented employees and allege that the Carrier violated the Scope Rule including the "head wall and retaining wall erection" language. At the November 6, 2015 conference on this case, the Organization presented individual statements from Claimants containing identical content as follows:

"Dear Brother Alberts,

I'm writing this letter to explain some of the work that I have done or been a part of over the years that I have worked with the railroad. The company has provided us with locomotive cranes with pile drivers so that we could drive various types of piling and that's what we did, we

drove whatever type of piling that they asked us to drive to do the job and we drove piling for piers, abutments, backwalls, wingwalls, track stabilization walls, for noise, and just whatever reason they wanted piling drove for we drove it and also we built all kinds of walls as well and during the floods in the 80's we built many walls in various spots for miles along the railroad where the flood waters had washed away underneath the tracks so we have done the work and can continue doing it if we have the equipment and material to do it with."

The Carrier asserts that the work was not simply building a head or retaining wall. Rather, it was the much more complicated work of building a micro-pile retaining wall, which requires drilled anchors. It states the location required a micro-pile retaining wall due to the steep slope, and a standard headwall or retaining wall would not suffice. And, it asserts that micro-piling work had never been performed by BMWWE employees in the past due to the highly specialized construction methods, skills, and equipment required.

We find that the micro-piling wall work in this case is retaining wall work reserved to the Organization under the Scope Rule. We find that compelling reasons existed to contract out the micro-piling retaining wall work in this case due to the steep slope of the work site, the un rebutted fact that such micro-piling work had never been performed by BMWWE employees in the past, and that specialized construction methods, skill and equipment of the contractors were needed for the project in question. While accepting the "first case" component in the Carrier's reasoning in this case we point out that the Carrier has continuing obligations to train its employees in new and developing methods and technologies it chooses or may choose to employ connected to Scope related work. We must deny this claim.

### AWARD

Claim denied.

**Form 1**  
**Page 4**

**Award No. 43472**  
**Docket No. MW-43902**  
**19-3-NRAB-00003-160729**

**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 1st day of March 2019.**