

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43476
Docket No. MW-44057
19-3-NRAB-00003-170099**

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:

- “(1) The Agreement was violated on July 10 and 11, 2014, when the Carrier assigned outside forces (Balfour Beatty) to perform Maintenance of Way work (grade and dump ballast) between Mile Posts QR 121.2 and QR 121.4 in New Berlin, New York (System File M Barnes 001/2014-175080 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants R. Barnes, G. Cole, J. Tyler, E. Adams and B. Grech shall be compensated “*** for one hundred fifteen (115) hours at the straight time rate of pay including any benefits and credits....”**

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.

In its August 25, 2014 letter to the Division Engineer, the Organization stated that:

“On claimed dates, July 10, 2014 – July 11, 2014, Balfour Beatty (5 contractor employees) graded ballast with a bulldozer and dumped fresh ballast in its place in the same location the track was dismantled and removed days prior, between QR 121.2 and 121.4 The work included the use of dump trucks, bulldozers and hand tools.”

The Organization contends that the Carrier violated MOA 1, Section 6, New Track Construction – Parts A, B and D. The Carrier disagrees, asserting it was in full compliance with all its agreements including sending the informational notice of the intent to contact for specific work in conjunction with the construction of a new siding located between mileposts QR 121.1 and QR 128.9 on the Albany Division, near Coxsackie, NY.

Memorandum of Agreement (MOA) effective May 23, 2007 states in pertinent part.

“Section 6 – New Track Construction

- A. Effective on the date of this Memorandum of Agreement, CSXT may contract out new track construction projects over $\frac{3}{4}$ of a continuous mile in length. For the purpose of this provision, “new track construction” shall be defined as the construction of new sidings, new yard or industrial tracks, new mainline track including the addition of parallel mainline track or, the extension of existing sidings, new bridges and structures and related work. Contractors performing such new track construction work shall be confined to such work and shall not perform work on existing track, bridge or structures in the vicinity. In the performance of new track construction work contractors may also use their equipment to move large switches (#15 #20 or larger switches) into place when necessary to tie new track construction into existing tracks. However, BMWED-represented employees shall perform all other work necessary to install such switches and they shall**

perform all subsequent maintenance, repair and rehabilitation work on the new tracks. (emphasis added)

- B. All new track construction work other than that described in Paragraph A above shall be performed by BMWED-represented forces and shall not be contracted out except that CSXT may contract subgrade work (below the ballast) necessary for all new track construction, irrespective of length.**

(emphasis added)

- D. In the event the Carrier plans to contract out work pursuant to sections 6 A and 6 B, the Carrier shall provide informational notice to the General Chairman involved, in writing, not less than 15 days in advance of the date of the contracting transaction and shall meet with the General Chairman upon request to discuss the matter.**
(emphasis added).”

Under Section 6 D, the Carrier had an obligation to provide informational notice to the General Chairman of the Carrier’s plans to contract out work pursuant to Sections 6 A and 6 B. We have reviewed the Carrier’s notice to the General Chairman regarding the New Track Construction, Coxsackie, NY and the Carrier’s detailed Scope Outline-Coxsackie, NY and we find from the site pictures submitted to the Board by the Organization that the work involved of grading ballast utilizing contractor employees and heavy equipment on a section of track that had been retired days earlier above the ballast line, making a new right of way was not work identified in the Informational Notice nor was it referenced in the Carrier’s detailed Scope Outline of the project as required by Section 6D.

We find that Section 6 A was violated as the pictures of record clearly show the work performed by contractors at QR 121.3 on an existing track, in contravention to the second sentence of Section 6 A stating that contractor performing such new track construction work shall be confined to such work and shall not perform work on existing tracks in the vicinity. And Section 6 B directs that all new track construction work other than that described in Paragraph A shall be performed by BMWED – represented employees and shall not be subcontracted out except that CSXT may contract out certain subgrade work.

We find that the operation of the heavy machinery in the track right of way grading project involved in this case is reserved to BMW members under the Scope Rule.

We shall sustain this claim.

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 1st day of March 2019.