

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43477
Docket No. MW-44058
19-3-NRAB-00003-170100**

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 the Carrier assigned outside forces (Northern Tree) to perform Maintenance of Way work (cut brush and trees) between Mile Posts QB 130.5 and QB 134.5 on the New England seniority district beginning on October 28, 2014 and continuing (System File M Brothers 026/2014-180084 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants M. Brothers, M. Morrison, T. Dalle, M. Besemer, J. Massey, B. Kalinowsky and C. Carry shall now be compensated ‘... for all hours, straight and overtime time pay, credits and benefits for work performed by contractors’ work forces to be divided equally and proportionately to each Claimant at their assigned rates of pay....’ beginning on October 28, 2014 and continuing until the violation ceases.”**

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 had an obligation to provide an informational notice of its plans to contract work to the involved General Chairman in accordance with the provisions listed in Section 2A, Paragraph 6 of MOA #1 which states in pertinent part:

“6. If the Carrier plans to contract out work pursuant to sections A 1, 2, 3, or 4 above, 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 contract transaction and shall meet with the General Chairman upon request to discuss the matter”.

The Carrier states in its February 8, 2016 letter to the Organization it was within its rights to have this work in question performed by contractors after serving an informational notice to the General Chairman by letter dated October 1, 2014. The General Chairman responded in part to the Carrier’s February 8, 2016 letter as follows:

“Your February 5, 2016, dated letter states the Carriers’ position in denial of instant claim pertains to the Organization failing to conference labor notice AL-2014-003029. As stated in initial claim, appeal, conference and here again, the Organization did not conference the notice because the Carrier failed to supply one. As stated in Jesse Dewes appeal letter, “The Organization did not raise objection to the contracting out notice, because it was never provided one until date of this claim denial, February 12, 2015.”

We find that the record lacks any evidence such as postmarks, e-mail confirmation, fax receipt or hand delivery showing that the Carrier mailed the General Chairman with an informational notice in connection with the track and tree cutting work involved in the instant case. The failure to notify the General Chairman that it intended to contract out the work in question in this case compels this Board to 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.