

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43656
Docket No. MW-43590
19-3-NRAB-00003-160341**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

**(Brotherhood of Maintenance of Way Employes 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 on March 14, 2014 the Carrier assigned outside forces (Southeast Rail Industrial Services) to perform Maintenance of Way work (painting around yard offices and building maintenance) at the Montgomery Yard in Montgomery, Alabama on the Atlanta Division on May 21, 22 and 23, 2014(System File B11706514/2014-170659 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 violation referred to in Parts (1) and/or (2) above, Claimants B. Gibbs, M. Mizzell, R. Tyler, D. Ragsdale, J. Underwood and J. Nichols shall now be compensated for ‘... an equal share of the total man hours made by the contractor (including overtime), 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 initial claim in this matter alleged Agreement violations when the Carrier contracted out three different kinds of work over three days in May of 2014: Smoothing of parking lots, paint around yard offices, and building maintenance on Montgomery Yard.

The Carrier's reply to the claim admitted that asphaltting work was performed by outside contractors. But the Carrier's reply went on to explain why the circumstances of that work was not covered by the Agreement Scope Rule. This part of the claim was apparently abandoned because it was not re-asserted in the Organization's later correspondence on the property.

As to the alleged painting and general maintenance allegations, the Carrier asserted the claim failed to provide sufficient information to "... meet the test for a valid claim." It went on to assert that the vagueness and lack of specificity "... gives the Organization the ability to change the course of their assertions should the claim be disproven." Thus, the Organization was effectively invited to properly develop the claim.

After the claim was discussed in conference, the Carrier renewed its contentions about vagueness and lack of specificity as well as its assertion about claim invalidity. Thus, the Organization was once again effectively invited to develop its claim. The Organization did not do so. In its final correspondence in the record, a short letter dated December 21, 2015, the Organization merely re-stated the allegations of the initial claim but only as to painting; it did not re-alleged the

performance of building maintenance or asphaltting. Significantly, no factual detail was added about painting.

Given the state of the record before this Board, we find the record provides no proper basis for concluding that any painting was performed as alleged. It follows that no violation of the Agreement has been proven. Accordingly, the claim must be denied.

AWARD

Claim denied.

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 17th day of May 2019.