

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43926
Docket No. MW- 44484
20-3-NRAB-00003-170612**

The Third Division consisted of the regular members and in addition Referee Meeta A. Bass 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 November 23, 2015 and continuing, the Carrier assigned outside forces to perform Maintenance of Way track maintenance work (adjusting rail to neutral temperature) between Mile Posts QS 184.1 and QS 185.5 on the Southwest Seniority District, Great Lakes Division (System File H42411815/2016-199888 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants J. Niebrugge, G. Stobel, J. Kuehnel, T. Haarmann, R. Beard, H. Purcell, T. Gasaway, K. Ruholl, L. Ruholl, E. Wendt, R. Wendt and G. Shulte shall now each ‘... be compensated for all hours worked by *Railworks* contractor employees beginning on November 23, 2015 and continuing until the violation stops, at each of their respective rates of pay, divided equally among the Claimants. Also, that all time be credited towards vacation, holiday and retirement, purposes. ***’ (Emphasis in original).”**

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.

By letter dated December 29, 2015, the Organization submitted a claim on behalf of the Claimants alleging that the Carrier violated the Agreement when the Carrier assigned contractors to perform scope-covered work without notice. On February 26, 2016, the Carrier denied the claim stating there was no rules or agreement violation. The claim was conferenced on July 19, 2016. The parties were unable to resolve the dispute and the claim was advanced. The claim is now before this Board for final resolution.

The Organization contends that the Carrier violated the Agreement when it assigned the work to outside forces instead of assigning the work to its own employees. The Organization also contends that the claimed work is reserved to the Carrier's Maintenance of Way forces and should have been assigned to the Claimants and not outside forces. The Organization asserts that the new track construction project was completed and the track had already been placed in service when the work was done. Further, the Organization contends that the MOA #1 reserves the work to the Maintenance of Way workforce once operation begins. Moreover, the Organization contends that the Carrier failed to provide notice of the contracting out of the claimed work. The Organization argues that the Carrier's defenses are without merit. It is the position of the Organization that the claim should be sustained.

The Carrier contends that the Organization failed to show that the Carrier violated any rules or agreements. The Carrier argues that that the claimed work was properly performed under MOA 1, Section 6 and the Organization failed to fulfill its burden of proof that any "subsequent maintenance, repair, and rehabilitation work" took place. The Carrier contends that the Organization was notified of its intent to subcontract the new track construction work. The Carrier argues that the claimed work was performed in completion of and relation to this new track construction. The Carrier argues that the contractor was instructed to complete the new construction work in the interest of economical operations, and the Carrier made a legitimate decision to preserve the contractor's accountability and indemnity. The Carrier asserts

that Section 6.A involves only subsequent maintenance and repair, and maintains that the claimed work was performed in relation to new track construction. It is the position of the Carrier that the Claim should be denied.

Applicable Agreement Provisions

The pertinent provisions of the Agreement Between CSX Transportation, Inc. and Its Maintenance of Way Employees Represented by the Brotherhood of Maintenance of Way Employees, effective June 1, 1999 are MOA #1, the Scope Rule, Rule 1, 3, 4 11 and 17. These rules and agreements are incorporated herein as if fully rewritten.

The Board has reviewed and considered the record, submissions, and arguments of the parties. The Carrier argues that the claimed work, adjusting the rail to the neutral temperature, was properly contracted out to outside forces pursuant to Section 6 of MOA 1. The Carrier provided notice of its intent to contract out new track construction on August 15, 2014, and also included the contractor's scope of work. The Organization challenges these assertions because the new siding was finished on November 16, 2015 and the Carrier began operations. Subsequently, on November 24, 2015 the contractor returned to perform the claimed work which consisted of heating the rail with a rail bound rail heater, cutting the rail for expansion and welding the joints after the rail heater expanded the rail, and knocking on the anchors to adjust the track. It is not disputed that the track was put in service on the new siding. MOA #1, reads thereafter "... BMWED-represented employees shall perform all subsequent maintenance, repair and rehabilitation work on the new tracks." The Organization thus argues that the claimed work was scope-covered work.

MOA 1, Section 6.A allows the Carrier to contract out new track construction projects over 3/4 of a continuous mile in length. The provision defines "new track construction" as the construction of new sidings, new yard or industrial tracks, new mainline track including the addition of parallel maintain line track or the extension of existing sidings, new bridges and structures and related work. The Carrier argues that the claimed work constitutes related work. The Board concurs.

The Board finds that the new construction project was not fully placed in normal operations, and was placed under restricted operations in accordance with MWI 1125-03 Installation and Thermal Adjustment of CWR which required the contractors to adjust the rail temperature prior to removing the restriction for normal operations. The

project was not completed. The Board finds that the Organization has not established by substantial evidence that the Carrier violated the cited rules.

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 5th day of March 2020.