

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43927
Docket No. MW-44486
20-3-NRAB-00003-170620**

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 2, 2015 and continuing through November 8, 2015, the Carrier assigned outside forces to perform Maintenance of Way work (interior building demolition work) on the Shipping and Receiving building in Barr Yard in Riverdale, Illinois on the B&OCT Seniority District, Chicago Division (System File H40411015/2015-198696 CSX).**
- (2) The Agreement was violated when, beginning on November 11, 2015 and continuing through November 30, 2015, the Carrier assigned outside forces to perform Maintenance of Way work (building demolition work) on the Shipping and Receiving building in Barr Yard in Riverdale, Illinois on the B&OCT Seniority District, Chicago Division (System File H40411115/2015-198700).**
- (3) As a consequence of the violation referred to in Part (1) above, Claimants M. Ailes and W. Faught shall now ‘... be compensated for two hundred, forty (240) hours of straight time and one hundred, eighty (180) hours of overtime, at each of their respective rates of pay, divided equally among the Claimants. Also, that all time be credited to-wards vacation and retirement.**
*****’ ”**

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 6, 2015, the Organization submitted claims alleging that the Carrier violated the Agreement when the Carrier assigned outside forces to perform ordinary Maintenance of Way work, building demolition work. By letter dated January 28, 2016, the Carrier denied any violation of the rules or agreements. The parties conferenced the claim on July 19, 2016 and were unable to reach of the matter. On May 11, 2017, the Carrier sent an additional letter to the Organization regarding both claims which corrected an administrative error in the original notice to contain both demolition of hazardous materials as well as site development. The claim was advanced through the arbitration process, and is properly before this Board for resolution.

The Organization contends that the subject work, demolition of Carrier buildings, is reserved to the Maintenance of Way forces as established by the Scope Rule, customarily and traditional performance, past agreement and practice. The Organization argues that the work reservation language of the Scope Rule covers the subject work. The Organization also contends that the evidence established during the on-property handling supports the fact that the Maintenance of Way forces customarily or traditionally performed the subject work. The Organization further contends that the Maintenance of Way Forces performed building demolition work at the subject location on predecessor railroads prior to the June 1, 1999 Agreement. Moreover the Organization contends that the Carrier failed to demonstrate that the exception in MOA#2, Section 4 for hazardous materials is applicable in this instance. The Organization contends that the Carrier violated the agreement when it failed to give advance notice regarding its intention to use outside forces to perform the subject work.

The Organization contends that the Carrier's defenses are without merit. The Organization maintains that the Carrier violated the agreement and the remedy is the "standard remedy in arbitration" when a carrier contracts out work in violation of the Agreement. It is the position of the Organization that the claim should be sustained.

The Carrier contends that the Organization failed to show the Carrier violated any rules or agreements. The Carrier argues that the parties may continue to exchange information up through the date a party files a Notice of Intent with the Board. The Organization was not harmed by the correction and had opportunity to respond. The Carrier asserts that the corrected notice includes both site development and the removal of hazardous materials. The Carrier asserts that under Section 4, the Carrier may contract out demolition work that requires hazardous material abatement. The Carrier argues that substantial evidence was established in the record that the abatement work could not be separated from the demolition, and the Organization did not refute the same. The Carrier contends that the remaining demolition work was properly contracted out as it was not scope covered per the second and third unnumbered paragraphs of the Scope Rule. Moreover the Carrier contends that the Organization failed to fulfill its burden of proof, and 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 the Scope Rule, Rule 1, 3, 4, 11 and 17 and Section 4 of the 2009 Bridge and Building Memorandum of Agreement. These rules are incorporated herein as if fully rewritten.

After review of the submissions, letters, documents, applicable provisions of the Agreement and other matters of record, the Board finds that the Organization failed to establish by substantial probative evidence a violation of the agreement. The record establishes that the structure contained asbestos and required asbestos abatement. Pursuant to the provisions of Section 4 of the Memorandum of Understanding, the Carrier may contract out demolition work that requires hazardous material where the abatement cannot occur separately from the demolition. The Board finds that the Organization failed to establish by substantial evidence that the hazardous materials could be abated separately from the demolition.

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.