

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43931  
Docket No. MW-44628  
20-3-NRAB-00003-180115**

**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 the Carrier assigned or otherwise allowed outside forces to perform Maintenance of Way work [building and installing two (2) track switches and six (6) 40-track panels] near Mile Post QTE 6.5 in Stanley Yard beginning on July 11, 2016 (System File H45406916/2016-209632 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 violations referred to in Parts (1) and/or (2) above, Claimants M. Collins, R. Gray, J. Romstadt, C. Chapman, D. Johnson, J. Gilliland, J. Janicki, B. Borgert, J. Morcom, P. Aranda and W. Wilson ‘... shall now be compensated for one thousand, two hundred (1200) hours at each of their respective rates of pay, divided equally among the Claimants.**

Also, that all time be credited towards vacation, holiday 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 August 10, 2016, the Organization submitted a claim on behalf of the Claimants alleging that the Carrier improperly assigned J-Star Industries to build and install two (2) switches and six (6) 40' track panels in Stanly Yard without notice of intent to contract. On October 5, 2016, the Carrier denied the claim stating there was no violation of the agreement rules since the claimed work was performed on a location leased Carrier customer. The claim was mutually handled in a claims conference on November 14, 2016. The parties were unable to resolve this matter, and the claim was advanced. The claim is before this Board for final resolution.

The Organization contends that the Carrier violated the Agreement when the Carrier assigned outside force to perform work, Building and installing two (2) track switches and six (6) 40' track panel, reserved to BMWED-represented employees. The Organization argues that the work at issue was work in connection with the construction, maintenance, repair inspection or dismantling of tracks and other structures or facilities used in the operation of the carrier in the performance of common carrier services and thus was reserved to the Carrier's Maintenance of Way employees. The Organization asserts that the clear language of the Scope Rule reserves the specific work involved to the Maintenance of Way workforce. In addition, the Organization argues that the subject work has been customarily and traditionally performed by Maintenance of Way Employees. The Organization contends that the Claimants were trained and qualified to perform the subject work. The Organization argues that the documents submitted are not reliable, and do not establish that the

property where the work was performed was not owned by CSX. The Organization urges the Board to draw a negative inference for the Carrier's failure to provide documents which the Organization requested. The Carrier failed to raise their defenses in the advance notice or during good-faith discussions. It is the position of the Organization that the claim should be sustained.

The Carrier contends that the claim is procedurally defective. The Carrier argues that the claim the Statement of Claim cited only to the 1981 letter which it did not refer to in the on-property record raising a procedural defect, and excluded all other rules. The Carrier contends that no violation of the rules or agreements; the letter is cited for the first time after the close of the on-property record. The Carrier contends that the 1981 Letter is not applicable to the parties. The agreement is dated December 11, 1981 and CSX did not exist as a legal entity until July 1, 1986 and was not represented by the NLRC. The parties have drafted its own agreements regarding the handling of subcontractors which is the controlling document between the parties. The Carrier asserts that in order for work to be reserved to BMW members, it must be in connection with tracks, bridges, buildings and other structures or facilities used in the operation of the carrier in performance of common carrier service as well as on property owned by the Carrier. The Carrier determined that the property was not leased but rather owned by the customer. The Carrier maintains this was not scope-covered work. The Carrier contends that the Organization failed to meet its burden of proof, and the claim should be denied.

#### Applicable Agreement Provisions

The pertinent provisions 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 1981 Berge-Hopkins Letter (hereinafter "1981 Letter", the Scope Rule, Rule 1, 3, 4, 11, 17 and 24 and Section 7 of the 2012 Memorandum of Agreement (MOA 3). These rules are incorporated herein as if fully rewritten.

The Board has carefully reviewed the record evidence and the submission of the parties. From the evidence of record, the Board finds that the Organization failed to meet its burden of proof that the claimed work occurred on property owned by the Carrier. The Scope Rule reads "the following work is reserved to BMW members all work in connection with the construction, maintenance, repair inspection or dismantling of tracks, bridges, buildings, and other structures or facilities used in the operation of the carrier in the performance of common carrier service on property

owned by the Carrier. The Organization failed to refute that the property was not by the Carrier. The Board finds no violation of the Agreement.

**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.