

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43932  
Docket No. MW-44629  
20-3-NRAB-00003-180116**

**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 outside forces to perform Maintenance of Way work (preparation and completion of a track swing) between Mile Posts QA 26.6 and QA 27.1 in Langhorne, Pennsylvania on August 22, 2015 (System File Con NTC 003/2015-195118 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants M. Kolesar, J. LaPort, G. Kohlmayer, J. Biemuller, R. Bates, M. Doheney, J. Cinalli, J. Jordan and P. Emberger shall be compensated ‘... for all hours (525) at the overtime rate including all credits and benefits....’”**

**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 October 8, 2015, the Organization submitted this claim on behalf of the Claimants alleging that the Carrier violated the agreement when it employed outside contractor between mileposts QA 26.6 and QA 27.1 near the town of Langhorne, PA, to perform work of preparation for a track swing. On December 7, 2015, the Carrier denied the claim. The parties conferenced the claim on October 18, 2016, and were unable to reach a resolution on said dispute. The claim was advanced and the matter is before this Board for final adjudication.

The Organization contends that the Carrier violated the agreement when contracted out the subject work to outside forces. The Organization argues that the work involved is reserved to the Maintenance of Way forces by the Agreement, The Organization also argues that the work performed by the outside forces involved track construction work of less than 3/4 mile, and the terms of the MOA #1 is not applicable which covers work claimed in connection with new track construction of 3/4 miles or longer. The subject work is reserved to the Maintenance of Way forces in accordance with the Scope Rule and the provisions of MOA#1. Lastly, it is the position of the Organization that the Claimed should be sustained.

The Carrier contends that the Organization failed to show a violation of any rules or agreements. The Carrier asserts that the claimed work was properly contracted out under MOA 1, Section 6 which permits the Carrier to perform sub grade work necessary for new track construction. The Carrier asserts that the Organization was properly notified the Organization regarding the use of contractors for this work. The notice stated that the work was to take place between mile posts QA 26.6 and QA 27.4. The Carrier challenges the 1981 Letter as a binding agreement. The Carrier further contends that the other rules are superfluous and should not be considered by the Board. Moreover the Carrier contends that the Organization has failed to meet its burden of proof. Rule 24(i) does not provide carte blanche access to all Carrier documents or record nor does this rule provide the Organization with the ability to shift its burden of proof in claiming a rule violation to the Carrier. 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 the 1981 Berge-Hopkins Letter (hereinafter "1981 Letter", the Scope Rule, Rule 1, 3, 4, 24, and Section 6 of the 2007 Memorandum of Agreement (MOA 1). These rules and agreements are incorporated herein as if fully rewritten.

After review of the record, the Board finds that the Carrier gave notice of intent to contract out new track construction work of 3/4 miles or longer. The Agreement allows work of this nature to be contracted out for services. The actual length of the new track construction was actually less than 3/4 miles, and the Agreement specifically reserve this work to the Maintenance of Way forces. The Carrier is in the best position to determine the length of the new track prior to construction to preserve the integrity of their agreement and enforce their responsibilities. The Board finds that the Carrier has violated the agreement.

**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 5th day of March 2020.