

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43933  
Docket No. MW-44630  
20-3-NRAB-00003-180120**

**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 Carrier violated the Agreement when it assigned outside forces (Steve Schmith SAS, Inc.) to perform Maintenance of Way work (mow and string trimming) along the banks and right of way in Dunkirk, New York, Silver Creek, New York and Tonawanda, New York on the Buffalo and Cleveland seniority districts on June 25, 2016 instead of assigning employees L. Czekanski and I. Moore thereto (Sys-tem File Con Brush Cut 001/2016-208794 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants L. Czekanski and I. Moore shall now be compensated “\*\*\* thirty one and one half (31.5) hours at the overtime rate of pay, including all credits and benefits for work performed by contractors’ work forces to be divided equally and proportionately to each Claimant at their assigned 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.

By letter dated July 21, 2016, the Organization filed this claim on behalf of the Claimants alleging that the Carrier used outside forces without notice to mow and string trim at Dunkirk, NY, Silver Creek NY, and Tonawanda, NY. The Carrier denied the claim stating there was no violation the Agreement as the claimed work involved the cutting of ornamental grass. The parties conferenced the claim on October 18, 2016. The parties were able to resolve the dispute and the matter is before this Board for final resolution.

The Organization contends that the Carrier violated the Agreement when the Carrier assigned outside force to perform the work of mowing and string trimming along the banks and right of way. The Organization also contends the record establishes that practice existed that CSX employees performed the Maintenance of Way work and string trimming along the banks and right of way throughout the Carrier's property. The Organization argues that this work is reserved to BMW employees. The Organization contends that the Carrier did not establish any of the criteria which would allow the Carrier to contract out the work. The Organization contends that the Carrier violated the agreement when it failed to notify the General chain regarding its plan to contract out work reserved to Maintenance of Way forces. It is the position of the Organization that the claim should be sustained.

The Carrier contends that MOA #1 permits the contracting out of services to maintain an ornamental lawn. The Carrier contends there was no notice violation as Section 2 exempts ornamental landscaping from notice requirements. The Carrier also contends that the Organization failed to demonstrate a violation of any rules or agreement. The claimed work was properly contracted out in accordance with the provisions of MOA 1, Section 2.A.5. The Carrier asserts that the area is surrounded by a decorative retiring wall with small trees planted in coordinating containers. Moreover, the Carrier cites arbitral precedent finding that the subject area is an ornamental lawn. It is the position of the Carrier that the claim should be dismissed.

**Applicable Agreement Provisions**

The Agreement Between CSX Transportation, Inc. and its Maintenance of Way Employees Represented by the Brotherhood of Maintenance of Way Employees (hereinafter, "Agreement"), effective June 1, 1999, are the Scope Rule, Rule 1, Rule 3, Rule 4 24(i), 2007 Memorandum of Agreement(MOA 1), Section 2, and December 11, 1981 Berg Hopkins Letter. These rules and agreements are incorporated herein as if fully rewritten.

The Board has reviewed the record and in particular the photographs of the area in question. Ornamental landscaping serves the primary purpose of adding visually pleasing decorations to the landscape. The area in the pictures provided appears to be quite overgrown. Ornamental lawns tend to be more closely maintained to preserve the visual qualities and decorative effects that are the hallmark of such lawns. The later pictures show that the growth has been cut. While a cut lawn or bank can be a pleasing sight, the care of an ornamental lawn, as say a golf course or a city entrance, is usually more extensive. Missing from the pictures is any evidence of trimming the trees or shrubs to eye-pleasing configurations. There is also a lack of colorful wildflower areas being trimmed or weeded to enhance the general appearance of the lawn or other ornamentation, statutes, benches, rock gardens, etc. for the same purpose and effect. The photographs do depict encased trees lining the embankment which does display a decorative effect. The retaining wall does have decoration in the form of capstones and patterned brick to provide a decorative effect. The Board finds that the subject area appears to meet the minimal requirements of an ornamental lawn. The Board finds the Organization has failed to meet its burden of proof.

**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.