

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43935
Docket No. MW-44655
20-3-NRAB-00003-180131**

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 16, 2015 and continuing, the Carrier assigned outside forces to perform Maintenance of Way work (cut brush and limbs and clean up work) along the right of way between Mile Posts SH 255.0 and SH 293.0 on the Andrews Subdivision of the Florence Division (System File B17901216/2016-200759 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants J. Day and W. Moody shall now each ‘... be compensated Eight (8) Hours Straight Time and Two (2) Hours Overtime, each, every day until the violation stops, at his respective rate of pay, and all time be credited to vacation and retirement, account of the carrier’s violation of the rules of the working agreement and this obvious loss of work opportunity.’ (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.

On January 13, 2016, the Organization filed this claim on behalf of the Claimants alleging that the Carrier improperly hired parties outside the agreement to cut tree limbs along the side track on the Florence Division< Andrews Subdivision. On March 11, 2016 the Carrier denied this claim stating there were no violations of any agreements or rules, and that the removal of the brush is the responsibility of the Signal Department in accordance with the Seaboard Coastline Agreement Side Letter Number 6, which grants the Carrier the ability to contract out the work. The claim was mutually handled at conference on November 15, 2016. As the parties were unable to resolve the dispute, the claim was advanced in arbitration. The claim is before the Board for final adjudication.

The Organization contends that the Carrier violated the agreement when the Carrier assigned outside forces to perform the work of brush, tree cutting and cleanup work along the right of way which is reserved to Track Department employees. The Organization contends that the claimed work is scope covered work. The Organization argues that the Carrier did not meet any of the exception stipulated to in the MOA 1 to permit the Carrier to contract out the work. The Organization contends that the Carrier violated the agreement when it failed to notice the general chairman regarding its plan to contract out work reserved to maintenance of way forces. The Organization contends that the defenses of the Carrier have no merit. The Organization argues that the record establishes that the were no pole lines to maintain, and the brush was next to the track, and the Manager's statement states that the Track department cannot handle it supports the position that the work accrued to Maintenance of Way forces. 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 claimed work involved the trimming of tree limbs for

preview of signals and was not scope covered work. The Carrier argues that Side Letter 6 proves removal of brush preview of signals is historically performed by the Signal Department work. The side Letter permits contracting out the claimed work. The Carrier also contends that no notice to subcontract is required since the claimed work is not scope covered work. Moreover the Carrier contends that since the claimed work is not scope covered work, there is no violation of the MOA Section 2 which was intended by the parties to interpret the scope rule. Lastly the Carrier argues that the other cited rules are not applicable. The Carrier maintains that the Organization has failed to meet its burden of proof, and the claim should be denied.

Applicable Agreement Provisions

The pertinent provision 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, 17 and the 2007 Memorandum of Agreement (MOA 1). The rules and agreement are incorporated herein as if fully rewritten.

The Board has reviewed the record. The Board finds that the claimed work is reserved to the Signalman, and under the agreement with the Signalman, the Carrier is permitted to contract out the claimed work. The Organization correctly asserts that the Carrier however has negotiated said work to be reserved to BMWF forces in the 2007 Memorandum of Agreement which is the most recent agreement. This Board has no authority to grant scope-covered work of another class to the BMWF. However the Board can enforce in this instance the integrity of the parties' negotiations and agreement. MOA #1 grants the Organization all brush cutting work. The Board finds that the Carrier in negotiating MOA #1 waived its rights to subcontract, and further finds that the Signal Department was unable to handle the claimed work, and the work should have been granted to the Claimants.

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.