

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43936
Docket No. MW-44657
20-3-NRAB-00003-180134**

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, on October 18, 19, 20, 21, 22 and 23, 2015, the Carrier assigned outside forces to perform Maintenance of Way work (change out bridge spans, laying out rubber pads, replacing track bolts, replacing steel plates and related work) at the bridge in the vicinity of MP CA 83.3 (Scott Street overpass) within Fulton Yard on the Richmond Seniority District (System File G33816415/ 2016-198419 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants D. Robinson, K. Lewis, E. Plecker, H. Boyd, C. Lange, C. Stinson, T. Hottinger and J. Sanders shall now each ‘... be compensated with an equal proportion of the (320) straight time man-hours and (448) time and one half man-hours at their appropriate rates of pay in effect on the dates claimed. ***” ”**

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 December 3, 2015, the Organization submitted a claim alleging that the Carrier violated the agreement when the Carrier assigned outside forces to perform ordinary Maintenance of Way work at the bridge in the vicinity of MPO CA 83.3 (Scott Street overpass) within Fulton Yard on the Richmond Seniority District. On January 25, 2016, the Carrier denied the claim. The claim was mutually handled in a claims conference on November 15-18, 2016. The parties were unable to resolve this matter, and the claim was advanced. The claim is before this Board for final adjudication.

The Organization contends that the complained work is reserved to the Carrier's Maintenance of Way Forces and argues that the work should have been assigned to the Claimants. The Organization asserts that the language of MOA 2 and the Scope Rule reserves the claimed work to the BMWF employees. The Organization argues that the complained work was in connection with the construction, maintenance and repair of a bridges used in the operation of the Carrier in the performance common carrier service; work which accrues to the Maintenance of Way Employees. The Organization also contends that the Carrier violated the agreement when it failed to notify the General Chairman regarding its plan to contract out work reserved to Maintenance of Way Employees. Further, the Organization contends that the appropriate remedy in this case is to allow each of the Claimants compensation at their respective assigned rates of pay for all hours expended by the outside forces in the performance of the work at issue. Lastly, it is the position of the Organization that the claim should be sustained.

The Carrier contends that the Organization failed to show that the Carrier violated any rules or agreements, and has not satisfied its burden of proof. The Carrier also contends that an emergency existed and the work was permitted under MOA 2, Section 5, thus the Carrier was exempted from the notice requirement. The

Carrier argues that BMW employees were initially assigned to a five day bridge project but the Carrier was faced with a situation where the failure to set the bridge spans within the maintenance window would shut down operations on the line. Moreover, the Carrier contends that the language of Paragraph B.3 shows the intent of the parties to permit the Carrier to contract the use of heavy equipment. Lastly the Carrier disputes the actual hours in question, and further argues that the Claimants were fully employed. It is the position of the Carrier that the claim should be dismissed.

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, 17 and the 2009 Memorandum of Agreement (MOA 2). These rules are incorporated herein as if fully rewritten.

The Board has carefully reviewed the record in this case. After the bridge project was underway, the Carrier determined its locomotive crane could not safely handle the weight of the bridge spans and that any delay would take the project outside the allowed five-day maintenance window and shutdown operations for an extended period due to the delay and the application of the rules. The Carrier states that it exercised reasonable business judgment in the interest of efficient and economical operations to set the bridge spans with the short time windowed allowed when it subcontracted out the work. Those business considerations however must include the Carrier's obligation under the Agreement. The Board concurs with the Organization that the miscalculation of the Carrier does not create an emergency contemplated by the terms of the Agreement. The fact that the incident arose due to a miscalculation of the crane size is evidence that the calculation of the crane size was a foreseeable event. The Board further finds that the Carrier should have, but did not, notify the Organization of its intent to use outside forces. The Organization has met its burden of proof, and the Board finds a violation of the Agreement.

There is no easy remedy for this contract violation. Ultimately, if the miscalculation would not have happened then the Carrier would have been permitted to contract out the work. The Carrier argues that the company has an obligation to the public to maintain operations and compliance with the notice and conferencing

mandates of the Agreement would have only delayed operations for an estimated twenty (20) days. Although this Board can appreciate the challenges in this industry, this Board has an obligation to enforce the terms of Agreement in order to preserve the integrity of 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.