

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43948
Docket No. MW-44861
20-3-NRAB-00003-180156**

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 January 24, 2016 and continuing through January 28, 2016, the Carrier assigned outside forces to perform snow removal work from around buildings, parking lots and walkways at various locations including the Curtis Bay, Locust Point, Bayview and Coal Pier Yard facilities in the Baltimore, Maryland area (System File A02800816/2016-203504 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants R. Myers, W. Woodring, C. Hollifield, S. McCray, M. Lidie, K. Wheeler, L. Evans, W. Conley, C. San Juan and E. Branham shall now each receive eighty-eight (88) hours' pay at the applicable time and one-half rate 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.

The Claimants were regularly assigned to positions at Curtis Bay, Locust Point, Bayview and Coal Pier Yard facilities in Baltimore Maryland and performed various Maintenance of Way duties including snow removal. By letter dated March 23, 2016, the Organization submitted a claim on behalf of Claimants alleging the Carrier the violated the Agreement when the Carrier hired outside forces to perform snow removal around buildings and walkways at Curtis Bay Yard, Locust Point Yard and Six Man Pickup near the city of Baltimore, MD. By letter dated May 20, 2016, the Carrier denied this claim stating there was no violation. The parties conferenced the claim on November 16, 2016. The parties were unable to resolve this dispute, and the claim was advanced. The claim is before this Board for resolution.

The Organization contends that the Carrier violated the Agreement when it assigned the claimed work for snow removal to outside forces. The Organization maintains that various Maintenance of Way work, including snow removal from yard parking lots and roadways, was scope-covered work either through direct reservation or through customary and historical basis. The Organization also contends the Carrier violated the Agreement when the Carrier failed to notify the general chairman regarding its plan to contract out the work. The Carrier does not dispute the lack of notice and that it failed to meet with the Organization to discuss the use of outside work forces. The Organization further contends that the Carrier's defenses have no merit. The Carrier provided no substantial evidence of an emergency. The Organization argues that the email correspondence between the Roadmaster and the Labor Relations Officer stating an emergency blizzard is not substantial probative evidence. The Organization further argues that that even if an emergency did exist, the Carrier should have made a good faith effort to call and use BMW Employees. 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. The Carrier claims that it properly contracted out the claimed work as it was dealing with a situation emergent in nature. The claimed work was performed during a state of emergency; the dates at issue involved the 2016 January Blizzard when the Governor of Maryland declared a state of emergency. The Carrier also contends that the claimed work is not specifically reserved under the Scope Rule nor is it reserved by past practice at the locations in question. The written statements

submitted by the Organization do not assert that the Claimant performed the claimed work at this location by practice; the Clifton Forge location is not in issue. Further the Carrier contends that other cited rules by the Organization are inapplicable to the claim. Moreover, the Carrier contends that the Claimants did not suffer loss of work and are not entitled to the windfall that would result from the excessive claimed hours. It is the position of the Carrier that the Claim be dismissed.

Applicable Agreement Provisions

The pertinent provisions governing this dispute in 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 2, Rule 3, Rule 4, Rule 11 and Rule 17; the same are incorporated herein as if fully rewritten.

The Board has reviewed the record and considered the arguments as presented. In this claim, the Organization argues that the assignment of outside forces to perform the snow removal for the area in question constituted a violation of the Agreement. A reading of the rules and agreement indicate that snow removal reserved to the BMWF is only on track structures and right of ways and the removal of snow from any other areas besides track structures and right away is not scope-covered work unless the Organization can show a practice of removal at the specific location by the employees pre-dating the June 1, 1999 System Agreement. The claimed work occurred in limited areas other than track structures or right of way, and is not specifically reserved by the Scope Rule. Therefore, the Organization must demonstrate a past practice of performing this work predating the parties 1999 System Agreement at the locations at issue. The Board finds that the Organization has failed to establish a practice of snow removal at this specific location, or that the work was scope covered, and therefore 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.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 5th day of March 2020.