

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44051
Docket No. MW-44116
20-3-NRAB-00003-170226**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens 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 on November 11, 12, 13, 14 and 16, 2014 when the Carrier assigned outside forces (Harrington Construction) to perform Maintenance of Way work (install culverts) on the Florence Division of the Raleigh/Rocky Mount Seniority District (System File B17900615/2015-181032 CSX).**
- (2) The Agreement was further violated when the Carrier failed to notify the General Chairman, in writing, as far in advance of the date of the above-referenced contracting transaction as was practicable and in any event not less than fifteen (15) days prior thereto or make a good-faith effort to reduce the incidence of subcontracting and increase the use of its Maintenance of Way forces as required by the Scope Rule and the December 11, 1981 National Letter of Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants K. Wilkins, T. McColl, R. Lockamy and A. Fields shall ‘... be compensated for Forty (40) Hours Straight Time, each, at their respective rates of pay, and all time be credited to vacation and retirement....’”**

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 retain seniority in various classifications within the Carrier's Bridge and Building (B&B) SubDepartment within the Maintenance of Way Department on the Raleigh Rocky Mount Seniority District, Florence Division. During the time period involved here, they were regularly assigned to perform the work of installing culverts and related duties.

On November 11, 12, 13, 14 and 16, 2014, the Carrier assigned outside forces (Harrington Construction) to perform ordinary Maintenance of Way B&B work (install culverts) on the Florence Division of the Raleigh/Rocky Mount Seniority District.

The Organization filed a claim on January 9, 2015, asserting that the Carrier had violated the parties' Agreement by assigning contractors to perform this work and by failing to serve Notice of Intent to contract on the Organization. The claim stated that the Carrier "hired Harrington Construction to install One (1) Twenty (20 inch) Culvert at MP SC 272.4 and Two (2) Thirty Six (36 Inch) Culverts at MP SC 274.6 and also clear the road to get to these Two (2) locations. This violation occurred on the Florence Division on the Raleigh Rocky Mount Seniority District." The Carrier denied the claim in a letter dated March 11, 2015, stating, in part, that the Carrier did not own the identified Mileposts.

On April 1, 2016, and after the parties had conferenced the claim, the Organization corrected its initial claim stating, "In the Documents it will show there was a typographical error in the Milepost location. This should have been the SE and not the SC." The Carrier objected to the belated correction, as it came too late for the

Carrier to research the claim. The parties were unable to resolve the dispute on-property and the claim is now properly before this Board for final adjudication.

There is no dispute that the Organization's initial claim contained a typographical error, thereby misidentifying where the disputed work took place. As a result, insufficient information was provided, as the identified Mileposts were not owned by the Carrier. When the correct Mileposts were identified many months later the Carrier was precluded from making a careful investigation of the claim.

The attempted change of location after the claim had been progressed constituted a significant variance from the original claim. The Organization is not permitted to amend its claim during the on-property handling. The claim is procedurally defective and must be dismissed.

AWARD

Claim dismissed.

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 18th day of June 2020.