

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44056  
Docket No. MW-44121  
20-3-NRAB-00003-170231**

**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 Carrier violated the Agreement when it assigned outside forces to perform Maintenance of Way work (drawbridge repair and maintenance work) at the drawbridge located in the vicinity of Mile Post SAC 19.1 near Hopewell, Virginia on the Raleigh/Rocky Mount Seniority District beginning on October 13, 2014 and continuing through October 20, 2014 (System File B17814114/2014-178630 CSX).**
- (2) The Carrier violated the Agreement when it assigned outside forces to perform Maintenance of Way work (drawbridge repair and maintenance work) at the drawbridge located in the vicinity of Mile Post SAC 19.1 near Hopewell, Virginia on the Raleigh/Rocky Mount Seniority District beginning on October 27, 2014 and continuing through November 3, 2014 (System File B17814214/2014-178633).**
- (3) As a consequence of the violation referred to in Part (1) above, Claimants J. Cockrell, P. Wise, J. Harper and T. McColl shall now each ‘... be compensated with an equal proportion of the (200) straight time man-hours and an equal proportion of the (120) time and one-half man-hours claimed therein, at their appropriate rates of pay in effect on the dates claimed.’**

- (4) As a consequence of the violation referred to in Part (2) above, Claimants J. Cockrell, P. Wise, J. Harper and T. McColl shall now each ‘... be compensated with an equal proportion of the (200) straight time man-hours and an equal proportion of the (120) time and one-half man-hours claimed herein, 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.

This matter concerns two claims that were consolidated before this Board. In both cases, the Claimants have established and retained seniority in various classifications within the Carrier’s Bridge and Building (B&B) Department. During the time period involved here, they were regularly assigned and regularly performed B&B work, including drawbridge repair and maintenance.

On August 27, 2013, the Carrier presented notice to the Organization of its intent to contract for specific work in conjunction with the replacement of the bridge spans near milepost SAC 19.0 of the Hopewell Subdivision of the Florence Division. On August 21, 2014, the Carrier presented notice to the Organization of its intent to contract for specific work on the Carrier’s Hopewell swing bridge, in Hopewell, Virginia at milepost SAC 19.0.

Beginning on October 13, 2014 and continuing through October 20, 2014, the Carrier assigned outside forces to perform drawbridge repair and maintenance work at the drawbridge located in the vicinity of Mile Post SAC 19.1 near Hopewell, Virginia on the Raleigh/Rocky Mount Seniority District. Beginning on October 27, 2014 and continuing through November 3, 2014, the Carrier assigned outside forces to perform

drawbridge repair and maintenance work at the drawbridge located in the vicinity of Mile Post SAC 19.1 near Hopewell, Virginia on the Raleigh/Rocky Mount Seniority District.

On November 13, 2014, the Organization filed two separate claims regarding this disputed work, alleging that the Carrier violated the parties' Agreement by using outside forces to perform work reserved to Maintenance of Way employees. The Carrier denied both claims. They were progressed separately on the property but were combined before this Board. The parties were unable to resolve the dispute on-property and the claim is now properly before this Board for final adjudication.

The Organization contends that the disputed work is specifically reserved to BMW-represented employees under the Scope Rule of the Agreement:

**"The following work is reserved to BMW members: all work in connection with the construction, maintenance, repair... of ... bridges, ... and other structures or facilities used in the operation of the carrier in the performance of common carrier service on property owned by the carrier. This work will include...operate machines, equipment, and vehicles...drawbridge operation and maintenance and any other work customarily or traditionally performed by BMW represented employees....It is also understood that this list is not exhaustive."**

The Organization further contends that the disputed work was also reserved to the Maintenance of Way forces because they customarily and traditionally performed such work. The Organization contends that before the Carrier can rely on the provisions of the 2009 Memorandum of Agreement ("MOA#2"), it must first notify the General Chairman of its intention to contract out the specific drawbridge repair and maintenance work involved. The Organization contends that the Carrier never provided the required notice.

The Carrier contends that the Organization failed to show the Carrier violated any rules or agreements. The Carrier contends that the claimed work was properly noticed and performed pursuant to MOA # 2, Section 5.B:

**"Section 5 - Bridge Construction, Replacement, Maintenance and Repair**  
**B. The Carrier may contract out the following work associated with the construction, replacement, maintenance and repair of bridges:**

1. Marine work in waterways such as installing and maintaining navigational fenders, constructing coffer dams and channels, underwater work, erection of bridge superstructures from barges and removal of drift using boats or barges.
  2. Caisson work (drilled shafts) in connection with bridge construction, maintenance and repair.
  3. Work of operating leased cranes with a lifting capacity of 100 tons or more when such lifting capacity
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5. Contractors may be used to assist BMWED-represented employees with the repair or replacement of mechanical and hydraulic components of movable bridges. However, the number of contractor employees used on any specific project shall never exceed the number of BMWED-represented employees assigned to work on the project on a daily basis.”

The Carrier contends that after notice was provided to the Organization, no request for a conference regarding the work was ever received. The Carrier contends that its notice adequately described the environmental and specialized work to be contracted out.

A careful review of the record demonstrates that the Carrier provided two separate notices to the Organization regarding the disputed work. On August 27, 2013, the Carrier gave notice of specific work to be performed near Milepost SAC 19.0 of the Hopewell Subdivision, to begin on or about September 11, 2013. The notice stated that the work was being subcontracted pursuant to § 5.B. On August 21, 2014, the Carrier gave notice of specific work to be performed near Milepost SAC 19.0 of the Hopewell Subdivision, to begin on or about September 5, 2014. The notice stated that the work was being subcontracted pursuant to § 5.B.5 and § 13.A.3.

The claimed work fell under the exceptions in the MOA #2, thereby permitting the contracting out of this work. The Carrier’s notices, which described the specific work, the dates, and the locations, were sufficient to meet its obligations.

### AWARD

Claim denied.

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**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.**