

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44057
Docket No. MW-44417
20-3-NRAB-00003-170548**

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 when, on February 1, 2, 3 and 4, 2016, the Carrier assigned outside forces to perform Maintenance of Way work (cut brush) along the right of way from Mile Post A 0.9 to Mile Post A 1.5 on the Florence Division (System File B17501916/2016-201809 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants C. Newcomb, R. Vaughan, S. Parent and S. Grubb shall now each ‘... be paid forty (40) hours of overtime at their respective rates of pay. Also, that all time be credited towards 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 have established and retained seniority in various classifications within the Carrier's Maintenance of Way Department. On February 1, 2, 3 and 4, 2016, the Carrier assigned outside forces to perform work along the right of way from Mile Post A 0.9 to Mile Post A 1.5 on the Florence Division. The contractor utilized four employees, each working ten hours per day, using chain saws, a woodchipper, a truck, and various other hand tools.

On February 21, 2016, the Organization filed a claim asserting that the Carrier contracted out cutting brush, which it alleged was work reserved for BMW members. The Carrier denied that the work had occurred as alleged, asserting that the contractors were performing clearing in conjunction with grading for realignment of the Carrier's track and that the work was required and funded by the State of Virginia. 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 Agreement was violated when the Carrier assigned outside forces to perform the cutting of brush along the right of way because this work is contractually reserved to Track Department employees. The Organization contends that the Scope Rule reserves "mowing" to its members and that this work is customarily or traditionally performed by BMW-represented forces. The Organization contends that the Carrier never refuted this position.

The Organization contends that the Carrier failed to notify the General Chairman of its plan to contract out the work at issue here. The Organization contends that the record contains no evidence that the claimed brush cutting work was required and funded by the State of Virginia. The Organization contends that during the on-property handling, the General Chairman fully rebutted the Carrier's position.

The Carrier contends that the work did not occur as claimed and that there was no brush cutting being performed by contractor ARS CORP. The Carrier contends that they were performing clearing in conjunction with grading for realignment of the Carrier's track and that this work was required and funded by the State of Virginia. Therefore, the Carrier contends, the work was permitted per the 2007 Memorandum of Agreement ("MOA # 1"), which states, in relevant part:

“C. If a government agency contracts for the relocation of the Carrier’s tracks and/or bridge and related structures in connection with a public infrastructure project that has been initiated by the government agency, at its expense and for its benefit, such relocation work (dismantling and construction of track, bridges and related structures) shall not be performed by BMWED-represented employees. However, if CSXT undertakes the responsibility to perform the track, bridge or related structures work, CSXT will use BMWED-represented employees to perform the retained work. Irrespective of who constructs the new track in connection with a relocation project (a contractor or BMWED-represented employees), the work of connecting such newly constructed track (permanent or temporary shoofly) to the Carrier’s active tracks shall be performed by BMWED-represented employees and they shall perform all subsequent maintenance, repair and rehabilitation work on such trackage once the Carrier has begun operations thereon.”

A review of the on-property correspondence reveals that the Carrier provided notice to the Organization on November 17, 2015, that it intended to contract for some of the work of retiring several yard tracks and shortening others. The notice states that the work is to be performed to create additional capacity for providing Amtrak service and was being funded in majority by the Commonwealth of Virginia. The Carrier’s forces were also used in conjunction with the project.

The Organization claimed that there was no evidence in the record to substantiate the Carrier’s assertion that this claimed work was required and funded by the State of Virginia. Further, it argued that brush cutting did not come under the exception to the Scope Rule. However, the Carrier’s assertion that no brush cutting occurred and that the claimed work was part of a larger relocation project has not been rebutted by the Organization. The Organization did not satisfy its burden of proving that the claimed work was reserved to its members.

AWARD

Claim denied.

Form 1
Page 4

Award No. 44057
Docket No. MW-44417
20-3-NRAB-00003-170548

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.