

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44219
Docket No. MW-45038
20-3-NRAB-00003-180534**

The Third Division consisted of the regular members and in addition Referee Dr. Andrée Y. McKissick 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 (Steve Schmith SAS, Inc.) to perform Maintenance of Way work (mow and string trimming) along the banks and right of way in Dunkirk, New York, Silver Creek, New York and Tonawanda, New York on the Buffalo and Cleveland Seniority Districts on May 6, 2016 (System File Con Brush Cut Mow 003/2016-206262 CSX).**
- 2. As a consequence of the violation referred to in Part (1) above, Claimants J. Szadek, L. Czekanski and V. Tenamore shall now be compensated ‘*** for thirty-six (36) hours at the overtime rate of pay, including all credits and benefits for work performed by contractors’ work forces to be divided equally and proportionately to each Claimant at their assigned rates of pay due to the Carrier violating Rules Scope, Rules 1, 3 and 4 of the June 1, 1999 CSXT/BMWED CBA.’”**

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 pertinent provisions in this matter is the 2007 Memorandum of Agreement (MOA-1), Section 2, as well as the Brotherhood of Maintenance of Way Employees (BMWED) Agreement, effective June 1, 1999, including the Scope Rule, Rules 1, 3, 4 and Rule 24(i) as well as the 1981 Letter). On May 20, 2016, the Organization failed this claim, but it was denied on July 18, 2016. It was appealed on August 25, 2016 to the Highest Designated Officer (HDO), and was denied again on August 1, 2017.

It is the position of the Carrier that string trimming and mowing in ornamental areas is not and has never been reserved to BMWED forces under the Scope Rule. That is, the Carrier points out that it is permitted to assign contractors, without notice to perform work based upon the MOA-1, Section 2.A.5. Specifically, the Carrier notes that this area is defined by a decorative retaining wall, with tree planters, and planted with ornamental grass for aesthetic reasons. In addition, the Carrier asserts that the Organization is required to show bad faith of the Carrier which is absent here, pursuant to the 1981 Letter.

On the other hand, the Organization maintains that the Scope Rule reserved this disputed work to the BMWED employees, as it refers to “all work” pursuant to “mowing” and its “maintenance.” Thus, the Organization reasons that the Carrier violated the Scope Rule. In addition, the Organization also points out that that the Carrier failed to notify the General Chairman in accordance with the fifteen (15)-day notification requirement of the Scope Rule. Thus, the Organization further reasons that a monetary remedy should ensue.

After a careful review of the record presented, the Board finds the Carrier’s explanation and analysis to be persuasive. That is, “mowing” and “maintenance” differs from ornamental landscaping which includes mowing and string trimming, as supported by Section 2 of the MOA-1.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 30th day of September 2020.