

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44220
Docket No. MW-45066
20-3-NRAB-00003-180564**

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 Agreement was violated when the Carrier assigned outside forces to perform Maintenance of Way work (moving rip rap, driving pile, building forms, pouring concrete and cement, and dumping stone) at Mile Post QR 42.41 in Fort Montgomery, New York on the Albany Service Lane beginning September 14, 2015 and continuing through November 6, 2015 (System File Con Maintenance 004/2015-197075 CSX).**
- 2. The Agreement was further violated when the Carrier failed to comply with the advance notification and conference provisions and/or when it failed to 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, F. Kovits, J. Dewe, D. Cook, R. Ickes and G. Olin shall be compensated for an equal and proportionate share of one thousand eight hundred forty-eight (1848) hours at their respective overtime rates of pay and any benefits and credits lost due to the Carrier’s violation of the Agreement.”**

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 record reflects that the Carrier notified the Organization of its intent to contract out this bridge repair work in connection with marine work in the Albany Division on May 28, 2014. The Organization filed this claim on November 12, 2015, alleging the violation of Section 5 and Section 14 of the Memorandum of Agreement (MOA-2), the Agreement's Scope Rule, Rules 1, 3, and 4, as well as the 1981 Letter. On January 8, 2016, it was denied, and appealed by the Organization on June 21, 2016.

It is the Carrier's position that this disputed bridge repair project is in connection with marine work occurring in the waterway. As such, the Carrier points out that MOA-2, 2009, specifically addresses such a de minimus situation in MOA-2, Section 5.B.1. In that, this MOA gives the Carrier the right to contract out such work by specifically using the verbiage, "repair of bridges" and "marine work in waterways." Thus, the Carrier reasons that there is no violation. Therefore, the Carrier further reasons that this claim should be denied.

On the other hand, the Organization argues the coverage of the Scope Rule also reserves the right of Maintenance of Way employees for the "repair and maintenance of bridges" as well. Accordingly, the Organization argues that such work is also covered by the MOA-2, Section 5 in its verbiage of "all work" referring to "repairing bridges."

After a careful analysis of the MOA-2, Section 5, A and B, the Board finds that the disputed work falls within the ambit of the exception, MOA, Section 5, B. Thus, there is no violation. Accordingly, there is no monetary remedy.

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.