

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44221
Docket No. MW-45446
20-3-NRAB-00003-190294**

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 (Lang Environmental, Inc.) to perform Maintenance of Way Bridge and Building (B&B) Subdepartment maintenance work at the bridge located between Mile Posts CA 664.6 and 664.9 near Cincinnati, Ohio on the Louisville Division beginning on November 5, 2017 and continuing (Carrier’s File 18-16540 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 regarding the work referred to in Part (1) above 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 J. Garland, J. Peterson, T. Nuffer, S. Thompson, F. Pierce, J. Johnson, W. Pittman and N. Thomas shall now each ‘... be compensated for any and all hours worked by the said contractor employees beginning November 5, 2017 and continuing until this matter is (sic) has been resolved.***’”**

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 provision which governs this dispute is the Agreement between CSX Transportation, Inc. and the Maintenance of Way employees, effective June 1, 1999, which contains the Scope Rule. The Organization adds also the Brotherhood of Maintenance of Way Employes (BMWED) Agreement which includes Rules 1, 3, 11, 17, as well as Section 5 of the 2009 Memorandum of Agreement (MOA-2).

On December 19, 2017, the Organization filed this claim, but it was denied on February 12, 2018. Although it was appealed, it was again denied by the Highest Designated Officer (HDO) on May 16, 2018.

It is the position of the Carrier that the contested work is not just the painting of the bridge. Instead, the Carrier points out that this project involved remediation and the abatement of lead paint, which required the specialized equipment and training of an outside contractor with these specialized skills. In response to the Organization's claim that such work is within the Scope Rule, the Carrier adamantly disagrees with this categorization of such work. That is, the Carrier counters that this unique work encompasses remediation: chemical wipes and with particular coating to prevent lead dust from becoming airborne and hazardous to all involved.

On the other hand, the Organization asserts the reserved work specifies "bridges" and their "maintenance" in the Scope Rule. Moreover, the Organization further asserts that this work is customarily performed by BMWED-represented employees. Specifically, the Organization cites September 1, 2009 (MOA-2) which describes "All work" connected with the "maintenance and repairing of bridges" was BMWED's work.

After a careful review of analysis of both arguments, the Board finds that remediation and the abatement of lead paint, which requires specialized equipment and training, is outside of the category of painting. As such, such work can be subcontracted to an outside contractor for this unique purpose under these circumstances.

This claim is denied. Accordingly, there is no monetary remedy for the aforementioned reasons.

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.