

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44222
Docket No. MW-45497
20-3-NRAB-00003-190316**

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, beginning on September 19, 2017 through October 12, 2017, the Carrier assigned outside forces (Clearway Industries) to perform Maintenance of Way Department work (operating a hi-rail truck and pickup truck to spray water on burning and smoking ties and brush) behind a rail grinder on the Henderson Subdivision near Evansville, Indiana (System File L58333017/2017-229213 CSX).**
- 2. As a consequence of the violation referred to in Part (1) above, Claimants J. Ward and D. Lucas shall now be compensated for ‘... 112 hours straight time, 145 hours’ time and one half, and 4 hours double time, at their current rates of pay, for the days claimed. We also request that these days be credited towards vacation (sic) retirement and guarantee purposes.***’”**

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 rules governing this transaction involves the Brotherhood of Maintenance of Way Employees (BMWED) Agreement: Rule 4, Rule 11, and Rule 17. On November 9, 2017, the Organization filed this claim on behalf of the above claimants. The Carrier denied the claim on January 5, 2018. The claim was appealed to the Carrier's Highest Designated Officer (HDO) on June 8, 2018, but again denied. The record reflects the Organization responded with additional information. Lastly, the Carrier concludes that the disputed work was not scope-covered, as defined by the Scope Rule nor by past practice.

It is the Carrier's position that the Organization did not demonstrate exclusive past practice, as required. Most importantly, the Carrier asserts that it has no obligation to use BMWED forces to perform this work except for the two (2) positions that are set aside under the Rail Grinder Agreement. Thus, the Carrier reasons that this claim must be denied in its entirety.

On the other hand, it is the Organization's position that exclusivity is not required. That is, the Organization argues that it has no applicability over the assignment of work to outside forces, as here. Specifically, the Organization asserts that the Carrier ignored the Memorandum of Agreement (MOA) which addresses that additional work, which states that the Carrier must assign such work to BMWED-represented forces under the terms of the June 1, 1999 Agreement.

After a careful analysis of the dispute, the Board finds that the Carrier violated the terms of the June 1, 1999 Agreement and the Memorandum of Agreement dated November 9, 2005 (Labor Agreement No. 12-053-05) by contracting out additional work done in support of its rail grinding operations to an outside contractor.

This claim is sustained. The monetary remedy, as stated in the Statement of Claim, shall be awarded for straight time, one and a half and double time to Claimants J. Ward and D. Lucas, as stated in the claim.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

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