

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44223  
Docket No. MW-45540  
20-3-NRAB-00003-190465**

**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 October 1, 2017 through October 12, 2017, the Carrier assigned outside forces (Wilderness) to perform Maintenance of Way Department work (spray water on hot spots and fires caused by the rail grinder) on the Florence Service Lane (Carrier’s File 2017-229217 CSX).**
- 2. As a consequence of the violation referred to in Part (1) above, Claimants M. Hensley and D. Lamie shall now each be compensated for eighty (80) hours at their respective straight time rates of pay and for fifty-two (52) hours at their respective overtime rates of pay.”**

**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 governing the work dispute is the Rail Grinder Agreement, dated November 9, 2005, as well as the Scope Rule and Rule 1 of the Agreement between the CSX Transportation, Inc. and Maintenance of Way employees, effective June 1, 1999. In addition, the Organization adds the Brotherhood of Maintenance of Way Employes (BMWED) Agreement involving: Rules 2, 3, 4, 11, 17, and Appendix M.

The Organization filed this claim on November 9, 2017, but it was denied on January 8, 2018. It was appealed and again denied on August 3, 2018.

It is the position of the Carrier that this work was not scope-covered nor was it reserved under Rule 1 of the Agreement. Instead, the Carrier points out that the work at issue constitutes firefighting work. That is, the Carrier asserts that it was not specifically listed within the Scope Rule. Lastly, the Carrier further asserts that the Organization did not make a showing of exclusivity of past practice.

On the other hand, it is the Organization's position that exclusivity is not required, as this requirement is not applicable to disputes over the assignment of work to outside forces. Moreover, the Organization counters that the Memorandum of Agreement, dated November 9, 2005 (Labor Agreement No. 12-053-05) clearly reserves all support work to BMWED members and lists no exceptions for outside contractors. Specifically, Labor Agreement No. 12-053-05 states that: "additional work must be done to support rail grinder operations ... will be assigned to BMWED-represented forces ... under the terms of June 1, 1999 Agreement."

After a careful analysis of the above Memorandum of Agreement, the Board finds that the Organization must prevail in this dispute. Accordingly, this claim is sustained.

This claim is sustained. The monetary remedy shall be awarded to Claimants M. Hensley and D. Lamie each of eighty (80) hours of straight time and for fifty-two (52) hours of overtime.

**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.