

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44224
Docket No. MW-45589
20-3-NRAB-00003-190413**

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 November 27, 2017 and continuing, the Carrier assigned outside forces (B&B Metal) to perform Maintenance of Way Department work (loading, distributing and laying out of tie plates) for rail teams in the vicinity of Oxford to Bellview and Anthony to Sparr, Florida at Mile Post S757.9 to S743.5 and Mile Post S724.6 to S718.5 on the Jacksonville Seniority District (System File J53186918/18-70888 CSX).**
- 2. As a consequence of the violation referred to in Part (1) above, Claimants J. Nadeau, J. Childs, D. Griffin and K. Mills shall now be paid ‘... for eight (8) hours straight time and two one half (2.5) hours overtime each date each claimant and continuing at their respective rate....’”**

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 the CSX Transportation, Inc. and its Maintenance of Way employees, effective June 1, 1999. Therein is the Scope Rule as well as the 2009 Memorandum of Agreement (“MOA-2”).

On January 17, 2018, the Organization filed this claim, but it was denied on March 19, 2018. It was appealed to the Carrier’s Highest Designated Officer (HDO), but it was again denied on July 2, 2018.

It is the position of the Carrier that the Organization failed to supply credible documentation to prove the violations alleged. Thus, the Carrier asserts that mere assertions are insufficient to support this claim. Specifically, the Carrier further asserts that the Claimants did not make a showing that they were available and would be entitled to compensation. Therefore, the Carrier reasons that the Organization has failed to fulfill its burden of proof, as required.

On the other hand, it is the Organization’s position that the nature of the work, loading, distributing and laying out of the tie plates, was ordinarily and customarily performed work, reserved for Maintenance of Way employees. Thus, this Organization further asserts that this work is within the Scope Rule and protected work under the Agreement. Moreover, the Organization reasons that it made a prima facie claim, but the Carrier has failed to now prove that this claim is not valid, as the burden shifts. Based upon the foregoing, the Organization requests the standard remedy for this breach for the named Claimants.

After a careful analysis of the record presented, the Board finds that the Organization’s reasoning to be persuasive. Stated differently, the Board further finds that this claim involves scope-covered work. The Organization made a prima facie claim, but the Carrier failed to show that the claim was not valid. Thus, compensation shall be forthcoming to the Claimants, as delineated.

The claim is sustained. Accordingly, Claimants J. Nadeau, J. Childs, D. Griffin and K. Mills shall be paid for eight (8) hours at straight time and two one half (2.5) hours overtime at their respective rate.

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.