

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44226  
Docket No. MW-45632  
20-3-NRAB-00003-190542**

**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, on March 11, 2018, the Carrier assigned outside forces (Hulcher) to perform Maintenance of Way Department work (grading work for track and switch panel replacement) at the West Bound Hump in Willard Yard (System File G45501818/18-12427 CSX).**
- 2. As a consequence of the violation referred to in Part (1) above, Claimants M. Cramer and E. Ott shall now each ‘... be paid twelve (12) hours at their respective overtime rates of pay. Also, that all time be credited towards vacation and retirement.\*\*\*’”**

**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 in this dispute consist of the Scope Rule and Rule 1, Rule 3, Rule 4, Rule 11, and Rule 17 of the Agreement between CSX Transportation, Inc. and its Maintenance of Way employees, effective June 1, 1999, as well as the Berge-Hopkins Letter (“1981 Letter”). On March 20, 2018, the Organization filed this claim, but it was denied on May 14, 2018. It was appealed to the Carrier’s Highest Designated Officer (HDO) on May 22, 2018. It was again denied on October 1, 2018.

It is the position of the Organization that the Carrier has unfairly relied on the emergency defense. However, the Organization asserts that the Carrier did not provide probative evidence that an emergency actually existed. That is, the Organization points out that the Carrier must prove that the event was sudden, unforeseen and the operations came to a halt. Lastly, the Organization maintains that the nature of the work in question, the grading for track and switch panel replacement, is clearly reserved work, covered by the Scope Rule.

On the other hand, the Carrier counters that the derailment on March 18, 2018 presented exigent circumstances, an emergency, which had to be corrected with expediency. It is clear, the Carrier asserts, that such circumstances represent an exception to the Agreement. In response to the Organization’s argument that complete cessation of operations is a prerequisite, the Carrier vehemently disagrees. Instead, the Carrier points out that the Claimants’ own written statements corroborate that the derailment needed to be repaired immediately. Moreover, the Carrier also points out that the Claimants participated in the cleanup. For the foregoing reasons, the Carrier requests that this claim be denied.

After a careful review of the record presented, the Board finds that the Carrier’s assertions to be compelling under these circumstances. Accordingly, the Board further finds that the Organization failed to show that the work at issue was not done under emergency conditions, as required for this claim to be sustained.

**AWARD**

**Claim denied.**

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**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.**