

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44227
Docket No. MW-45633
20-3-NRAB-00003-190555**

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 28, 2018, the Carrier assigned outside forces (Holland) to perform Maintenance of Way work (weld rail joints) between Mile Post BG 201.9 and Mile Post BG 202.1 near New Haven, Ohio on the Akron East District (System File G46502918/18-07108 CSX).**
- 2. As a consequence of the violation referred to in Part (1) above, Claimants D. Zelei and J. Cominsky shall now each ‘... be paid the fourteen (14) hours, worked by the contractor, 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 which govern this dispute are: the Scope Rule and Rules 1, 3, 4, 11 and 17 of the Agreement between CSX Transportation, Inc. and Maintenance of Way employees, effective June 1, 1999, as well as the 1981 Letter, and Section 1 of the 2007 Memorandum of Agreement (MOA-1). Lastly, the Holland Weld Agreement is equally applicable to this dispute. On May 7, 2018, the Organization filed this claim, but it was denied on June 27, 2018. It was appealed to the Carrier's Highest Designated Officer (HDO), but denied on October 2, 2018.

It is the Carrier's position that this work simply involved the supervising of the usage of equipment to perform the welds. As such, this Carrier asserts that this supervision is not covered under the Scope Rule. Moreover, the Carrier points out such work is specifically permitted by the Holland Weld Agreement, dated MOA, August 23, 2007, Section 1. Based on the above, the Carrier reasons that it has no obligation to use Brotherhood of Maintenance of Way Employees (BMWED) forces to perform this work.

On the other hand, it is the position of the Organization that this work is covered by the Scope Rule. Specifically, the Organization points to the verbiage that "all work in connection with ... welding" is "reserved to BMWED members." Moreover, the Organization adds that this work was customarily and traditionally performed by such members.

After a careful analysis of these aforementioned provisions, the Board finds that the Holland Weld Agreement, Section 1, dated August 23, 2007, directly addresses the supervisory issue. That is, it allows supervisors to continue to monitor and maintain the performance of welding. Thus, this award must be denied due to this specific provision.

This award is denied for the aforementioned reasons.

AWARD

Claim denied.

ORDER

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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.