

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44229
Docket No. MW-45666
20-3-NRAB-00003-190647**

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 May 12, 2018 and continuing, the Carrier assigned outside forces (Sugar Shack) to perform Maintenance of Way Department work (spray water on fires caused by the rail grinder and keep down dust) behind Rail Grinder RG 414 and Rail Grinder RGS 9 at various locations along the right of way on the Florence Service Lane (Carrier’s File 18-73742 CSX).**
- 2. As a consequence of the violation referred to in Part (1) above, Claimants M. Hensley and K. Kuhn shall each now ‘... be compensated for all straight time and overtime hours worked by each contractor employee beginning May 12, 2018 and continuing until this matter has been resolved.’”**

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 this dispute is within the Rail Grinder Agreement (November 9, 2005) and the 2012 Memorandum of Agreement (MOA-3), specifically the Scope Rule and Rule 1 of the Agreement between CSX and Maintenance of Way Agreement, effective June 1, 1999. In addition, the Organization also cites: Rule 2, Rule 3, Rule 4, Rule 11, Rule 17, Appendix M of the Brotherhood of Maintenance of Way Employees (BMWED) Agreement. This above claim was sent directly to the Highest Designated Officer (HDO) on June 28, 2018. It was denied on September 18, 2018.

It is the position of the Carrier that the work at issue was not scope-covered. Moreover, the Carrier further asserts that this work was not historically performed by BMWED employees to the exclusion of any other party. Specifically, the Carrier points out that the operating water trucks for fire and dust prevention are not Maintenance of Way functions. That is, the Carrier reasons that the work at issue is firefighting work, which is not contemplated under the rubric of the Scope Rule.

On the other hand, the Organization argues that the Memorandum of Agreement (MOA), dated October 25, 2005 (Labor Agreement No. 12-050-05) was superseded. It did provide the jurisdiction of contracting out issues as it pertained to rail grinding and support work. However, on November 9, 2005 (Labor Agreement No. 12-053-05) adopted a new MOA which superseded the previous October 25, 2005 MOA. The new one provides as follows:

“If CXT determines that additional work must be done to support rail grinding operations that are contracted out under the terms of this Letter of Agreement, that work will be assigned to BMWED-represented forces on the applicable Seniority District or Service Lane under the terms of the June 1, 1999 Agreement.”

After a careful analysis of the facts presented, the Board finds that the above new Memorandum of Agreement, dated November 9, 2005, superseded the previous MOA, October 25, 2005. Thus, the work at issue belongs to the BMWED-represented forces.

This claim is sustained. Claimants, M. Hensley and K. Kuhn, shall each receive six-hundred sixty-three (663) hours at straight time and overtime pay, as required under this 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.