

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44567
Docket No. MW-45523
22-3-NRAB-00003-190419**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(Lake Superior & Ishpeming Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Cliffs’ Tilden Mine) to perform Maintenance of Way work (cutting brush and trees) along the Carrier’s right of way near Mile Post Q73 on January 21, 2018 (System File C-01-18-080-01-L LSI).**
- (2) The Agreement was further violated when the Carrier failed to notify the General Chairman in writing of its intent to contract out the work referred to in Part (1) above as required by Rule 4 and the December 11, 1981 National Letter of Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants S. Niemi and R. Wilson shall each now be compensated a proportionate share of eight (8) 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 Organization's claim alleges brush cutting work has historically, traditionally, and customarily been performed by Carrier forces "on this property" (second bullet point of the claim) and thereby asserts scope coverage of the work. However, the record herein establishes that the Carrier operates a railroad over land it does not own. It only has a 200' wide easement from the landowner to construct, maintain, repair and renew a railroad, including the road bed and a truck road within the easement. The record fails to establish whether the brush cutting in question was even within the boundary of the easement. The Carrier provided evidence that it was not.

Moreover, the Carrier noted that the landowner may have contracted with the Carrier to perform brush cutting on its land in the past. This would not establish any scope coverage of such contracted work on non-owned property. The record also fails to establish that the Carrier had any knowledge the landowner would use its own employees to perform the disputed work nor did the Carrier have any control over the landowner's use of its own employees to work on its land.

As a result, the record does not establish scope coverage of the work in question.

AWARD

Claim denied.

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 8th day of October 2021.

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