

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44937  
Docket No. MW-45761  
23-3-NRAB-00003-190678**

The Third Division consisted of the regular members and in addition Referee Jacalyn J. Zimmerman when award was rendered.

(Brotherhood of Maintenance of Way Employes 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 March 14, 2018 and continuing, the Carrier assigned outside forces, including but not limited to MSC Industrial Supply Co., to perform Maintenance of Way Department work (replace bolt bins, sort current inventory and build job orders) at the CSX Bridge Shop at Mile Post CLS 0.2 in the town of Barboursville, West Virginia (System File F38502418/18-82148 CSX).

(2) As a consequence of the violation referred to in Part (1) above, Claimants F. Frye, II and C. Gough shall now each be compensated for all hours worked by the outside forces at their respective rates of pay as well as being credited for all time towards vacation and retirement benefits.”

**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 Parties agree that the claimed work is not specifically enumerated within the Scope Rule. Accordingly, the analysis in this case comes down to whether the claimed work is covered by the language "...and any other work customarily or traditionally performed by BMWED represented employees." Based on the record before us, the Organization provided statements to support customary and traditional performance by a letter dated July 3, 2019. While the Carrier provides a copy of a letter sent to the Organization via email on August 29, 2019, refuting the Organization's statements, the Notice of Intent was filed with this Board on August 28, 2019, effectively closing the record, so this Board cannot consider the Carrier's letter or attachments. This Board makes no commentary on the evidence the Carrier presented but recognizes that each case is based on an appellate individual record. This award is not intended to preclude a future arbitrator from analyzing the evidence presented by the Carrier to determine if it would or would not have changed the analysis. Accordingly, this Board must sustain the claim based solely on the record before it as the Organization's evidence was not timely refuted.**

### **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 21<sup>st</sup> day of April 2023.**