

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44938  
Docket No. MW-45762  
23-3-NRAB-00003-190679**

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

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

**PARTIES TO DISPUTE:** (  
(CSX Transportation, Inc.

**STATEMENT OF CLAIM:**

“STATEMENT OF CLAIM “Claim of the System Committee of the Brotherhood that: (1) The Agreement was violated when, beginning on January 2, 2018 and continuing, the Carrier assigned outside forces (Safeway Scaffold) to perform Maintenance of Way Department work (erect and dismantle scaffolding) at Mile Post CA 663.0 near Cincinnati, Ohio on the Cincinnati Terminal District (System File L60500618/18-10602 CSX). (2) As a consequence of the violation referred to in Part ( 1) above, Claimants R. Farmer, J. Godman, F. Nickel, B. Ferrell and M. Sheafer shall now each be compensated for an equal share for all hours worked by the outside forces beginning January 2, 2018 and continuing.

**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 Board is not persuaded that the claimed work is reserved based on this record. In its letter dated August 23, 2019, the Carrier asserted that BMWED forces have erected and will continue to erect traditional scaffolding but that the claimed work involved engineered scaffolding, which has been contracted out since at least 2012. In addition, the Carrier provided invoices to support the practice of contracting out engineered scaffolding. The Organization failed to respond to the distinction between the two types of scaffolding. Accordingly, the Board must deny the claim based on the instant record.**

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