

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

**Award No. 44941**  
**Docket No. MW-45991**  
**23-3-NRAB-00003-200463**

**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:**

**“Claim of the System Committee of the Brotherhood that:**

**(1) The Carrier violated the Agreement when it assigned outside forces (R.J. Corman) to perform Maintenance of Way Department work (filling washouts with stone and surfacing track) near and/or between Mile Posts ACB 244.0 and 249.7 on the Florence Division on September 26 through October 1, 2018 (System File F348 I 59 I 8/18-72876 CSX).**

(2) The Carrier violated the Agreement when it assigned outside forces (R.J. Corman) to perform Maintenance of Way Department work (filling washouts with stone and surfacing track) in the vicinity of Mile Posts AC 249.3 and 254.8 on the Florence Division on September 26 through October 4, 2018 (System File F348I6018/18-98764).

(3) The Carrier violated the Agreement when it assigned outside forces (R.J. Corman) to perform Maintenance of Way Department work (filling washouts with stone and surfacing track) near the Duart Spur tracks near and/or between Mile Posts SEA 297.6 and 310.0 on the Florence Division on September 26 through October 9, 2018 (System File F34816 I J 8/ 8-28556).2

**(4) The Carrier violated the Agreement when it assigned outside forces (Hulcher and B&P Enterprise) to perform Maintenance of Way Department work (filling washouts with stone) near and/or between Mile Posts SE 269.7 and 272.2 on the Florence Division on September 18 through September 20, 2018 (System File F348163 18/18-18137).**

(5) The Carrier violated the Agreement when it assigned outside forces (R.J. Corman) to perform Maintenance of Way Department work (removing downed trees, filling washouts with stone and surfacing tracks) near and/or between Mile Posts SE 356.8 and 371.8 on the Florence Division on September 22 through October 3, 2018 (System File F34816418/18-47433).

(6) The Carrier violated the Agreement when it assigned outside forces (R.J. Corman) to perform Maintenance of Way Department work (remove downed trees and debris from tracks and right of way) near and/or between Mile Posts SE 347.0 and 356.8 on the Florence Division on September 22 and 23, 2018 (System File F34816518/18-03630).

(7) As a consequence of the violation referred to in Part (1) above, Claimants J. Caulder, T. Stewart, C. Calhoun, J. Carroll, B. Brumbles and J. Inman shall each ' ... now be paid an equal portion of five-hundred-seventy-six (576.0) man-hours expended by the Contractor at their respective overtime rate of pay of and all time be credited towards vacation and retirement for the Claimants. Please advise when this claim will be allowed, and as to which pay period such payment will be made.'

(8) As a consequence of the violation referred to in Part (2) above, Claimants J. Hayes, J. Caulder, T. Stewart, C. Calhoun, J. Carroll, B. Brumbles and J. Inman shall each ' ... now be paid an equal portion of eight-hundred-sixty-four (864.0) man-hours expended by the Contractor at their respective overtime rate of pay of and all time be credited towards vacation and retirement for the Claimants. Please advise when this claim will be allowed, and as to which pay period such payment will be made.'

(9) As a consequence of the violation referred to in Part (3) above, Claimants J. Caulder, T. Stewart, C. Calhoun, J. Carroll, B. Brumbles and J. Inman shall each ' ... now be paid an equal portion of one-thousand-one-hundred-seventy-six (1176.0) man-hours expended by the Contractor at their respective overtime rate of pay of and all time be credited towards vacation and retirement for the Claimants. Please advise when this claim will be allowed, and as to which pay period such payment will be made.'

(10) As a consequence of the violation referred to in Part (4) above, Claimants J. Caulder, T. Stewart, C. Calhoun, J. Carroll, B. Brumbles and R. Williams shall each ' ... now be paid an equal portion of

two-hundred-eighty-eight (288.0) overtime hours and one-hundred-forty-four (144.0) double-time man-hours expended by the Contractor at their respective overtime rate of pay of and all time 3 be credited towards vacation and retirement for the Claimants. Please advise when this claim will be allowed, and as to which pay period such payment will be made.

(11) As a consequence of the violation referred to in Part (5) above, Claimants J. Caulder, T. Stewart, C. Calhoun, J. Carroll, B. Brumbles and J. Hayes shall each ' ... now be paid an equal portion of one-thousand-one-hundred-fifty-two (1152.0) man-hours expended by the Contractor at their respective overtime rate of pay of and all time be credited towards vacation and retirement for the Claimants. Please advise when this claim will be allowed, and as to which pay period such payment will be made.”

**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 persuaded that the claimed work is reserved by the Agreement. However, the record clearly establishes an emergency as contemplated by the Agreement. The fact that the Carrier was aware that Hurricane Florence was going to affect Carrier operations and was planning accordingly, does not make it any less of an emergency. The Agreement states that Emergencies applies to “fires, floods, heavy snow and like circumstances”. Certainly, such a devastating natural disaster like Hurricane Florence would meet this criteria. As such, under the precedent cited by the Carrier on contracting out during emergency situations, the instant claim is denied.

**Form 1  
Page 4**

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**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.**