

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44943
Docket No. MW-46005
23-NRAB-00003-200466**

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 (Joseph B. Fay and Fay Contracting) to perform Maintenance of Way Department work repairing, replacing and maintaining a bridge located at Mile Post CFP I 02.8 on the Baltimore Division beginning June 22, 2018 and continuing (System File B 16814618/18 -79983CSX).

(2) As a consequence of the violation referred to in Part (I) above, Claimants M. Peterson, W. Alban, A. Shindledecker, C. Oglesby, Jr., C. Russell, D. Seltzer, K. Leonard, B. Roessner, R. Graves, D. Patrick, K. Springer, R. Brown, D. Young, C. Bradford, R. Burrows, R. Barker, W. Lardani and S. Nolan shall each... now be paid an equal portion of the man hours expended by the Contractor's employees from the starting date of this claim until the date the violation stopped at the respective overtime (sic) of pay for each Claimant, and that all time be credited towards vacation and retirement for the Claimants. Please advise when this claim will be paid.”

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.

In the instant claim, the Carrier relies on an “emergency” defense. As a threshold matter, the Organization argued the MOAs preclude the Carrier from raising an emergency defense. We disagree with the Organizations interpretation of the Agreement and MOAs which specifically provide an emergency defense even for work related to bridge construction, replacement, maintenance and repair. In addition, Arbitration precedent interpreting the Agreement and MOA at issue specifically allow the Carrier to hire contractors to perform work when a bona fide emergency exists.

However, in this claim based on the facts presented the Carrier did not prove an emergency existed. While the bridge in question was damaged in May of 2018, the claimed work did not begin until June 22, 2018 and the construction of the bridge itself did not occur until notice was sent on August 2, 2018. Such a delay undermines the Carrier’s argument that there was an emergent situation as contemplated by the Agreement. In addition, the record indicates that the Contractor employees were working twelve (12) hour days. This also undermines the Carrier’s emergency argument. Accordingly, we find that the Carrier failed to establish that an emergency existed and this Board sustains the instant 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 21st day of April 2023.