

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44947  
Docket No. MW-46176  
23-3-NRAB-00003-200595**

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 (Plasser) to perform Maintenance of Way Department work (undercutting) at Mile Post QDS 4.0 on the Cleveland Seniority District, Great Lakes Division between August 13 and 30, 2018 (System File CO-AD-10022018/18-34373 CSX).

(2) As a consequence of the violation referred to in Part (I) above, Claimants A.Duran, K. Rodhe, W. Judware, B. Gunter, J. Parish, A. Gerald, M. Pennington and P. Ferrell shall now “\*\*\* be compensated three hundred thirty six (336) hours, for the lost work opportunity, including all hours worked by the outside contractor (Plasser) employees, at their overtime rates of pay, to be divided equally and proportionately at their respective rates of pay, including all credits and benefits due, for this Carrier violation of MOA 3 Section 2, Rules Scope, Rules 1, 3 and 4 of the June I, 1999 CSXT/BMWED CBA, resulting in Maintenance of Way work being performed by outside contractor workforces.”

**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.

There is no evidence in this record that the contractor had more than three (3) operators on the undercutter at a time. The operative word in the MOA is "operators". The Parties did not use the work employees. Accordingly, the Carrier having more than 3 employees at the location does not violate the Agreement. There is no evidence that more than three (3) employees operated the undercutter. For these reasons, the claim is denied.

**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.