

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45116
Docket No. MW-46453
24-3-NRAB-00003-200806**

The Third Division consisted of the regular members and in addition Referee Jeanne Charles 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 (Vorst Paving) to perform Maintenance of Way Department work cutting the existing road asphalt prior to crossing renewal at road crossings near Mile Posts CAB 7.5 and CAB 29.7 on February 20 and 21, 2019 (System File I64802419\19-02629 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants M. Abel, V. Leighty and S. Carter shall now be paid an equal portion of seventy-two (72) hours of overtime expended by the contractor at the proper rate of pay and all time credited towards vacation and retirement.”**

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.

Claimants M. Abel, V. Leighty and S. Carter have established and held seniority within the Carrier's Maintenance of Way Department. The Claimants were assigned in various classifications within the Maintenance of Way and Structures Department at the time of this dispute.

This claim is based on the proper application of the June 1, 1999 Scope of Work agreement ("Agreement") between the parties. At issue is whether the Carrier violated the Agreement when on February 20-21, 2019, it assigned an outside contractor to perform the work of cutting the existing road asphalt prior to a crossing renewal at road crossings near Mile Posts CAB 7.5 and CAB 29.7 near the town of Goochland, Virginia on the I64 Service Lank Work Territory (SLWT). The Organization contends that the subject work is reserved by the first and second paragraphs of the Scope Rule contained in the Agreement and past practice; the Carrier failed to comply with the advance notification and conference provisions for the claimed work prior to contracting out such work; and the defenses raised by the Carrier do not defeat the claim.

Conversely, the Carrier maintains that saw cutting a vehicular road is not scope-covered work. Additionally, the Carrier contends that it has the right to contract out the work under the December 1, 2016 Letter of Understanding ("LOU"). This LOU specifically allows the Carrier to contract out asphalt work referenced in MOA 1, Section 3 of the Agreement. The Carrier contends that the plain meaning of the LOU is that all asphalt work after December 1, 2016, can be contracted out by the Carrier.

By letter dated April 9, 2019, the Organization filed a timely claim on behalf of the Claimants. The claim was properly handled by the Parties at all stages of the appeal up to and including the Carrier's highest appellate officer. The matter was not resolved and is now before this Board for final adjudication.

In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. As the moving party, it was the Organization's responsibility to meet its burden to prove

by a preponderance of evidence that the Carrier committed the alleged violation(s). After careful review of the record, the Board finds the Organization has met its burden.

First, the Carrier's defense that the disputed work may be contracted out pursuant to the December 1, 2016 LOU, is rejected. That defense was not raised on the property and may, therefore, not be considered by this Board. Second, the record establishes that the disputed work (cutting the existing road asphalt prior to crossing renewal) is covered by the Scope Rule contained in the Agreement. We find that the disputed work was "in connection with the construction, maintenance, repair, inspection, or dismantling of tracks, bridges, buildings and other structures or facilities used in the operation of the carrier in the performance of common carrier service on property owned by the carrier." Therefore, the Carrier was not permitted to assign the work to contractors without first offering it to the employees. Accordingly, there is sufficient evidence to establish a violation by the Carrier.

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 28th day of November 2023.