

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45117
Docket No. MW-46465
24-3-NRAB-00003-200957**

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 (Kyle Tracy Farms LLC) to perform Maintenance of Way Department work (dismantling the track of an entire yard, pulling spikes, removing rails and OTM, loading rails and ties and hauling them away) between Mile Posts QSK 1.5 and QSK 2.9 on the Nashville Division on November 26, 2018 through December 23, 2018 (System File NAS400119/19-19693 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants B. Brumett, C. Winkle and I. Luke ‘... shall now be compensated for two thousand, three hundred, fifty-two (2,352) hours at each of their respective straight time and overtime rates of pay, divided equally among the Claimants. Also, that all time be credited towards vacation, holiday and retirement. In accordance with Rule 24(f), please advise the undersigned as to when this claim will be allowed.”**

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 B. Brumett, C. Winkle and I. Luke 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 Scope of Work agreement ("Agreement") between the parties. On November 13, 2018, the Carrier filed a verified notice of exemption with the Surface Transportation Board (STB) under 49 C.F.R. Part 1152, Subpart F – Exempt Abandonments and Discontinuance of Service, to discontinue service over an approximately 3.6-mile rail line on its Woodlands Subdivision between milepost QSK 0.0 and milepost QSK 3.6, in Vermilion County, Illinois. The exemption was granted and became effective January 2, 2019. Prior to the STB's decision, on November 26, 2018 through December 23, 2018, the Carrier assigned outside forces (Tracy Farms, LLC) to perform the work of dismantling the track of an entire yard, pulling spikes, removing rails and OTM, loading rails and ties and hauling them away. At issue is whether the Carrier violated the Agreement when it assigned this work to contractor Tracy Farms, LLC., during the above-referenced claim period.

The Organization contends that the subject work was improperly contracted out since the determination of abandonment did not occur until after the work was completed. The Carrier asserts that the track was abandoned two (2) years prior to the assignment of work and the filing with the STB was a necessary formality but was not determinative of when the track was abandoned. Because the disputed work did not take place on a track that was operational, it did not fall within the scope of the Agreement, the Carrier argues.

By letter dated January 12, 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 not met its burden.

We find the disputed work did not pertain to the Carrier's operations and/or maintenance of the railroad. The Carrier's verified notice filed with the STB, in this case, substantiates that the assigned work did not involve work for the purpose of the operation or maintenance of the railroad. In sum, the track was abandoned. As other Boards have held, tracks not in use cannot pertain to the Carrier's operations and, therefore, is not work within the scope of the Agreement. *See Third Division Award No. 30948 (Benn)*. Accordingly, we must conclude that the dismantling work at issue here does not fall within the Scope provision of the Agreement.

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 28th day of November 2023.

LABOR MEMBER'S DISSENT
TO
AWARD 45117, DOCKET MW-46465
(Referee J. Charles)

I must dissent to the Majority's findings in this case. Specifically, the Majority held:

“We find the disputed work did not pertain to the Carrier's operations and/or maintenance of the railroad. The Carrier's verified notice filed with the STB, in this case, substantiates that the assigned work did not involve work for the purpose of the operation or maintenance of the railroad. In sum, the track was abandoned. ***”

The Carrier filed for a notice of discontinuance with the Surface Transportation Board (STB) on November 13, 2018. However, the Carrier's position in this regard is disingenuous, unproven and without merit for the following reasons. First, the discontinuance of service of the tracks involved was not effective until February 14, 2019, nearly two (2) months after the claimed work was completed. Until the Carrier is granted an exemption from the STB to discontinue service in connection with the tracks involved, the tracks are legally considered serviceable and under the control and auspices of the Carrier.

In addition, the Majority's reliance on Award 30948 is misplaced. Award 30948 finds that the track was abandoned pursuant to ICC (a precursor to the STB) authority so the work was outside of the Agreement. In this case, the property was not abandoned pursuant to STB authority until nearly two (2) months after the contracting transaction. Accordingly, the underlying facts are not analogous and the award should not have been guiding to the Majority. For all of the reasons specified herein, I must respectfully dissent.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Zachary C. Voegel', with a stylized flourish at the end.

Zachary C. Voegel
Labor Member