

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45118
Docket No. MW-46466
24-3-NRAB-00003-200958**

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 (Erosion Solutions) to perform Maintenance of Way Department work (repairing a washout) at Mile Post OOC 285.0 in Knoxville, Tennessee on February 23, 24 and 25, 2019 (System File ATL402419/19-56463 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants C. Carmley and M. Wescott ‘... shall now be compensated for one hundred, fifteen (115) hours of straight time and nine hundred, eighty-nine (989) hours of overtime at each of their respective rates of pay, divided equally amongst them. 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 C. Carmley and M. Wescott 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. It is undisputed that on February 23-25, 2019, a washout occurred which shut down operations on the mainline track for 48 hours. The Scope Rule states:

In the event the carrier plans to contract out work within the scope of this Agreement, except in emergencies, the carrier shall notify the General Chairmen involved, in writing, as far in advance of the date of the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereto. 'Emergencies' applies to fires, floods, heavy snow and like circumstances.

At issue is whether the Carrier violated the Agreement when it assigned an outside contractor to perform the repair work in connection with the washout. The Organization contends that the subject work is reserved by the first and second paragraphs of the Scope Rule contained in the June 1, 1999 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 the disputed work falls within the clear exception within the Scope Rule pertaining to emergencies.

By letter dated April 5, 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 substantial evidence in the record that the disputed work fell within the emergency exception of the Scope Rule. An emergency is “an unforeseen combination of circumstances which call for immediate action.” NRAB Third Division, Award 36982 (Benn). There is a long line of cases in the Third Division holding that emergency conditions permit the Carrier to contract out the work. *See* NRAB Third Division, Award 32273 (Meyers) (denying claim and holding washout was emergency condition); NRAB Third Division, Award 37459 (Benn) (denying claim holding washout was an emergency); see also NRAB Third Division, Award 37948 (Wallin) (denying claim holding derailment was emergency condition allowing Carrier to contract out work); and NRAB Third Division, Award 29965 (Marx) (denying claim and holding derailment was emergency). There is no basis for this Board to depart from the line of reasoning of other Board on the division. Therefore, the Carrier was within its right, under the emergency conditions present here, to assign the work to contractors without first offering it to the employees. Accordingly, there was no violation of 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.