

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45119  
Docket No. MW-46629  
24-3-NRAB-00003-210391**

**The Third Division consisted of the regular members and in addition Referee Jeanne Charles when award was rendered.**

**(Brotherhood of Maintenance of Way Employes 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 (Steve’s Excavating and RJ Corman) to perform Maintenance of Way Department work (delivering, unloading and installing track panels and switch panels and associated grading work) at Mile Post CD 76.4, Columbus Subdivision on the Great Lakes North Service Lane in Carey, Ohio on August 12, 13 and 14, 2019 (System File D-19SCSX-003/19-21016 CSX).**
- (2) The Agreement was further violated when the Carrier failed to notify the General Chairman, in writing, as far in advance of the date of the above-referenced contracting transactions as was practicable and in any event not less than fifteen (15) days prior thereto and failed to provide an opportunity for conference.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants D. Moore, L. Webb, Z. Dixon, R. Lafery, M. Reedmiller, R. Miller, J. Stockmaster and J. Prior shall now ‘... be compensated one hundred eighty (180.0) hours at the overtime rate of pay, for the lost work opportunity, including all hours worked by the employees of outside contractors [Steve’s Excavating and R J Corman]. This payment is to be divided equally and proportionately at the Claimant’s (sic) respective rates of pay, including all credits and benefits due, for the Carriers (sic) violation of but not limited to Rules Scope, Rules 1, 3 and 4 of the June 1,**

**1999 CSXT/BMWED CBA, resulting in M of W work being performed by outside contractor work forces’.”**

**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 D. Moore, L. Webb, Z. Dixon, R. Lafery, M. Reedmiller, R. Miller, J. Stockmaster and J. Prior 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 or around August 12, 2019, there was a collision resulting in a 21-car derailment on the mainline track which took place in the vicinity of Mile Post CD 76.4, Columbus Subdivision, on the Great Lakes North Service Lane, in Carey, OH. The Carrier deemed it to be an emergency and engaged outside contractors to clear the wreck and restore the site. The work included track work of setting panels, cutting the grade, and unloading a switch. These were repairs needed to put the mainline track back in service. 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 the subject work to a contractor in connection with the derailment.

The Organization contends that the subject work is reserved by the clear language of the Agreement; 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 have no merit. Conversely, the Carrier maintains that the dispute work falls within the clear exception within the Scope Rule pertaining to emergencies.

By letter dated October 8, 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 that the record substantiates 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); NRAB Third Division, Award 29965 (Marx) (denying claim and holding derailment was emergency). There is no basis for this Board to depart from this line of reasoning. Therefore, the Carrier was within its right, under the circumstances 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 28<sup>th</sup> day of November 2023.