

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45120
Docket No. MW-46630
24-3-NRAB-00003-210392**

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 (Loram) to perform Maintenance of Way Department work (undercutting) between Mile Posts QDS 12.0 and QDS 15.0 on the Cleveland Seniority District/Great Lakes North on July 29, 30 and 31, 2019, August 5, 6, 7, 12, 13, 20, 21, 22, 26, 28 and 29, 2019, September 3, 4, 5 and 11, 2019 (System File D-19MOA3CSX-002/19-87923 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 W. Judware, A. Duran, R. Dalaba, D. Guyer, R. Graham and R. Dean shall now be compensated five hundred twenty-four (524) hours at their respective overtime rates of pay to be divided up equally and proportionally at their respective rates of pay including all credits and benefits due for the lost work opportunity resulting from the Carrier’s violation.”**

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 W. Judware, A. Duran, R. Dalaba, D. Guyer, R. Graham and R. Dean 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. At issue is whether the Carrier violated MOA3, Section 2, the Scope rule, and Rules 1, 3, and 4 of the Agreement when it assigned an outside contractor to perform undercutting work using five (5) contractor employees instead of three (3) contractor employees permitted under the MOA on the dates referenced in the claim. The Carrier asserts that only three (3) contractor employees operated the undercutting equipment and, therefore, it did not violate the Agreement.

By letter dated September 24, 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.

The Board finds sufficient evidence in the record that only three (3) contractor employees operated the equipment at issue. The trainee and supervisor who were present with the contractor employees were not performing the work. Therefore, no violation of the agreements occurred.

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.