

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45124
Docket No. MW-47083
24-3-NRAB-00003-210484**

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 (Polivka International and STX Railroad) to perform Maintenance of Way Department work surfacing and de-stressing track and quality control work on Track #2 between Mile Posts J143.4 and J145.6 on the Nashville Division in Chattanooga, Tennessee beginning on October 25, 2019 to and including December 6, 2019 (System File NAS709819/19-62670 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants K. O’Neal, D. Byers, G. Fults, J. Edmonds, J. Ingram, M. Green, J. Maupin, J. Fults, B. Davis, C. Guyer, G. Church, III, D. Green, J. Graham, C. Vaughn, J. Dawson, G. Church, Jr., M. Winton, J. Hartsfield, J. Brown, T. Fann and K. Jackson ‘... shall now be paid three hundred and thirty six (336) hours straight time, and eighty four (84) hours overtime, each, at their respective straight and overtime rates of pay.’”**

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.

The above-named claimants 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 subject work was improperly contracted out during the cited claim period. The Organization contends the Carrier violated the Agreement when it failed to file notice with the Organization regarding subcontracting of surfacing work and assigned outside forces to perform the subject work. The Carrier asserts that it filed a notice with the Organization outlining it was performing a new track construction project that was longer than 3/4 of a mile and it was within its right to have contractors perform the work pursuant to Paragraph 6 B. of MOA 1. Specifically, the Carrier contends that the subject work was not performed on a track in operation and, therefore, the work involved does not fall within the Scope of Work provision of the Agreement.

By letter dated December 11, 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 record reflects that the Organization viewed the subject work as subsequent maintenance, repair and rehabilitation work of a completed track that would be within the Scope agreement. However, the record establishes that the track was not complete and fully operational. A new track cannot be used in normal operation and is subject to speed restrictions until the final thermal adjustment is performed. Restricted speed does not constitute normal operations. The new construction is not complete without the thermal adjustment. That was the case here. Thus, the new track was not fully operational. This determination is consistent with other recent Board precedent which held new track construction is not completed and the track is not placed in normal operations until the neutral rail temperature is adjusted in compliance with MWI requirements. NRAB Third Division, Award 43926 (Bass). Accordingly, we must conclude that the 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.