

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45383
Docket No. MW-47910
25-3-NRAB-00003-221134**

The Third Division consisted of the regular members and in addition Referee Barbara C. Deinhardt when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference**

PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it allowed outside forces (K.W. Reese) to perform Maintenance of Way work (tree cutting and brush cutting along the right of way) at Davis Interlocking, Mile Post 38.4 on April 7 and 8, 2021 (System File BMWED-161403-TC AMT).**
- (2) The Agreement was further violated when the Carrier failed to notify the General Chairman, in writing, of its intention to use outside forces to perform the subject work and/or failed to obtain the written concurrence of the General Chairman before contracting out the work.**
- (3) The claim appeal as presented by Vice Chairman L. Owens, on September 30, 2021, to Labor Relations Specialist D. Johnson shall now be allowed as presented because said claim appeal was not disallowed by Labor Relations Specialist Johnson in accordance with Rule 64.**
- (4) As a consequence of the violations referred to in Parts (1) and/or (2) and/or (3) above, the Claimants (BMWED employees who were assigned to Gang C162 and headquartered at Amtrak’s Perryville Maintenance of Way Base) shall now ‘... receive an equal proportionate share of all hours (one hundred and twenty (120) total) expended by the contractors on each date identified in this**

claim payable at the Claimant's respective straight time and overtime rate of pay. *** Also, all lost credits and benefits normally due must be included with the Carrier's settlement to make up for the lost work opportunity ***' and the Claimants must '**** be made whole in every way for any loss resulting from Management's violations.' (Emphasis in original)."

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.

On April 7 and 8, 2021, outside forces performed brush and tree cutting along the James Hall Trail in Newark, Delaware. The trail is owned by the City of Newark.

The Organization argues that the work performed by the outside contractor was Maintenance of Way work covered by the Scope Rule. The Carrier violated the Agreement because it did not provide timely informational notice and there was no good faith effort to reach an agreement. Brush cutting and tree cutting is historically Organization work. The Carrier did not prove that it didn't own the property where the work was taking place and did not prove that the work was of such an emergent nature that Organization members could not be assigned. In addition, the Organization contends that the Carrier committed a violation of the Agreement when it failed to timely notify the Organization in writing of its disallowance of the Organization's appeal letter dated September 30, 2021 within the contractually required 60 days specified within Rule 64, thereby violating the Agreement.

According to the Carrier, the Organization did not meet its burden of proving that the Carrier violated the agreement when the outside contractor performed the work in question. The City of Newark and the Carrier work in cooperation to make

sure the trail is maintained due to the proximity to the railroad, but the work did not occur on Amtrak property and the contractor's equipment never entered Carrier property. In accordance with Article IV-Application and Intent, which states, "the Scope rule does not apply to work on any property not owned or operated by Amtrak." A contractor performing work on non-Amtrak property is not governed by the Scope and Work Classification Rule and no notice was required under it. In addition, the work was an emergency. Branches and tree debris were falling onto pedestrians and bikers that were along the trail.

Upon a review of the record as a whole, the Board finds that the Organization has not met its burden of proof. The record before us establishes that the work was required to be done immediately as there was a danger of injury to the public. There were reports of tree limbs and branches falling onto pedestrians and hikers along the trail. This constitutes an emergency within the meaning of the Scope Rule exception.

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 19th day of December 2024.