

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45384
Docket No. MW-47946
25-3-NRAB-00003-220979**

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 on January 5, 6 and 29, 2021 when it assigned or otherwise allowed outside forces (Century Fence Construction) to perform Maintenance of Way work (removing existing right-of-way chain link fencing and erecting new, temporary chain link fencing) adjacent to the Ivy City Maintenance Facility located at 1401 T St. NE, Washington, D.C. 20018 (System File BMW-160166-TC AMT).**
- (2) The Agreement was further violated when the Carrier failed to comply with advance notification and conference provisions in connection with the Carrier’s intent to contract out the subject work.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants R. Painter, U. Blake, R. Crowder, R. Baker, D. Waldron, R. Wilson and B. Gum shall now ‘... receive an equal proportionate share of all hours (one hundred twenty (120) total) expended by the contractors on 1/05/2021, 1/06/2021, and 1/29/2021 payable at the Claimant’s (sic) respective straight time and overtime rates. *** Also, all lost credits and benefits normally due must be included with the Carrier’s settlement ***” (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.

The Organization argues that on January 5, 6 and 29, 2021, the Carrier assigned or otherwise allowed outside forces (Century Fence Construction) to perform Maintenance of Way work (removing existing right of way chain link fencing and erecting new, temporary chain link fencing) adjacent to the Ivy City Maintenance Facility located at 1401 T St. NE, Washington, D.C. 20018. No notice relative to this scope covered work was provided to the Organization. Fencing, right-of-way cleanup, and brush cutting work is reserved to Maintenance of Way employees per the Scope Rule.

According to the Organization, the Fencing Agreement makes clear that unless otherwise agreed all other work associated with new fence installation will be performed by BMWED forces. In light of the clear language of the Scope Rule reserving this work to the bargaining unit and the November 4, 2010 Fencing Agreement itself which reads that: “* all other work associated with new fence installation will be performed by BMWED forces,” there can be no doubt but that the work claimed herein should have been assigned to Claimants.**

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 Carrier submits that “the claimed work was not scope covered as it was not to the benefit of the Carrier but was an incidental and temporary part of a separate project being performed by a contractor which involved a Settlement Agreement between the Carrier and the Organization. As mentioned above, the removal of the existing fence and installation of the temporary fence was part of a multi-million-dollar project for the electrification of the North storage tracks for use by Acela

trains. The fencing work claimed here was a temporary fence installed by the contractor with a different purpose. That purpose was to secure the worksite as well as the contractor's own equipment and materials during the course of the project. This fence will be dismantled when the project is complete. In no way was this temporary fence erected for the benefit of Amtrak. It is not railroad work, nor was it needed or requested by Amtrak. The claimed work was strictly incidental work associated with the work being performed by the contractor as agreed to in the May 5, 2020 settlement agreement. On January 5, 6 and 29, 2021, outside forces performed work relating to the installation of a temporary fence near Ivy City Maintenance Facility in Washington DC which resulted in the Organization's claim. However, the work being claimed was not maintenance and repair of existing fence, as stated in the claim. The claimed work involving removing existing fencing and installation of a temporary fence was done as part of a separate major construction project occurring on the North tracks."

Upon a review of the record as a whole, the Board finds that the Organization has not met its burden of proof. The parties agree that the essential issue here is whether the work in question is covered by the Scope Rule. The record evidence establishes that the fence was not owned by or erected as a benefit to Amtrak. The temporary fencing was installed for the benefit of the contractor to allow access to the work area and to secure the worksite and contractor equipment, not as regular maintenance of existing fence. The erection of the fence was an incidental and temporary part of a separate project being performed by a contractor pursuant to a settlement Agreement between the Carrier and the Organization.

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.