

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45407
Docket No. MW-47710
25-3-NRAB-00003-230015**

The Third Division consisted of the regular members and in addition Referee Diego Jesús Peña when award was rendered.

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

PARTIES TO DISPUTE: (
(Keolis Commuter Services

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (J.F. White Construction) to perform Maintenance of Way and Structures Department work (including, but not limited to, installing temporary grade crossings) on the Dorchester Branch at the Alexander Street Crossing from 11:00 P.M. on August 24 through 5:00 A.M. on August 25, 2021 and again from 11:00 P.M. August 25 through 5:00 A.M. on August 26, 2021 (System File S-2418/BMWE 90/2021 KLS).**
- (2) The Agreement was violated when the Carrier assigned outside forces (J.F. White Construction) to perform Maintenance of Way and Structures Department work (including but not limited to, installing temporary crossings with timbers and ballast) on the Dorchester Branch near Norfolk Avenue Bridge from 10:00 P.M. on September 8 through 5:00 A.M. on September 9, 2021 (System File S-2124K2421)BMWE 04/2022).**
- (3) The Agreement was violated when the Carrier assigned outside forces (J.F. White Construction) to perform Maintenance of Way and Structures Department work (including but not limited to, installing temporary crossings with timbers and ballast) on the Dorchester Branch near Norfolk Avenue Bridge from 10:00 P.M. on September 8 through 5:00 A.M. on September 9, 2021 (System File S-2124K2421)BMWE 04/2022).**

- (4) The Agreement was further violated when the Carrier failed to comply with the advance notification and conference provisions in connection with the Carrier's plans to contract out the work referred to in Parts (1) and/or (2) and/or (3) above and when it failed to assert good faith efforts to reach an understanding concerning said contracting out as required by Rule 24 of the Agreement.
- (5) As a consequence of the violations referred to in Parts (1) and/or (4) above, Claimants R. Goscinak, V. Nesbitt and J. Hartley must now be fully compensated all hours worked by contractor employees, to be divided equally and proportionately amongst all Claimants at their applicable rate of pay (including overtime and double time rates), as well as all credits for vacation and all other benefits for lost work opportunity.
- (6) As a consequence of the violations referred to in Parts (2) and/or (4) above, Claimants R. Goscinak, V. Nesbitt and J. Hartley must now be fully compensated all hours worked by contractor employees, to be divided equally and proportionately amongst all Claimants at their applicable rate of pay (including overtime and double time rates), as well as all credits for vacation and all other benefits for lost work opportunity.
- (7) As a consequence of the violations referred to in Parts (3) and/or (4) above, Claimants A. Secchiaroli, D. Secchiaroli, J. Silva, T. Davidson and D. O'Connell must now R. Goscinak, V. Nesbitt and J. Hartley must now '...be fully compensated all hours worked by contractor employees, to be divided equally and proportionately amongst all Claimants at their respective rates of pay (including overtime and double time rates), as well as all credits for vacation and all other benefits for their lost work opportunity.

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.

Factual Background

Claimants R. Goscinak, V. Nesbitt, J. Hartley, A. Secchiaroli, D. Secchiaroli, J. Silva, T. Davidson and D. O'Connell have seniority in the Carrier's Maintenance of Way and Structures Department, and on the relevant dates pertaining to this claim, were assigned and working their respective positions.

On July 1, 2014, the Carrier contracted with Massachusetts Bay Transportation Authority ("MBTA"), a separate entity from Carrier, to operate and maintain commuter rail service. The MBTA owns the commuter rail property, infrastructure, rolling stock and other equipment the Carrier uses to operate the commuter rail service. MBTA retains the right, as owner, to perform work and bid out work on its property in the same locations where the Carrier functions.

If the MBTA requests the Carrier to perform any work on its property, it does so under the terms of Schedule 9, Part 1 of the Operating Agreement between the Carrier and MBTA which states:

The [Carrier] shall perform any Services not otherwise required in this Agreement, when and as directed in writing by the MBTA, subject to the provisions of Section 4 (Emergency Supplemental Work) of this Schedule 9 (Supplemental Work), such written direction to contain particular reference to this Schedule 9 (Supplemental Work) and to designate the work to be done as Supplemental Work.

Employees of J.F. White Construction ("White") were observed performing Maintenance of Way Department work on August 24 and 25, 2021 (installing temporary grade crossings), on September 8 through September 9, 2021 (installing temporary crossings with timber and ballast) and on September 11 through September 12, 2021

(installing temporary crossings with timber and ballast) at multiple locations. White is a separate entity not affiliated with the Carrier.

Position of Organization

In its Position Statement, the Organization claims that the Carrier retained White to perform the work at issue. The Organization maintains that the Carrier's retention of White as contractor violates Rules, 1, 5, 7, 11 and particularly 24 of the Parties' Agreement. Rule 24 requires that the Carrier notify the General Chairman fifteen (15) days prior to the date of retaining a contractor. The Organization asserts that at no time did the Carrier notify the Organization of its intention to contract out this work and seeks contractual remedies for the Carrier's failure to comply with the Rules cited above.

Carrier's Position

The Carrier denies that it violated Rules 1, 5, 7, 11 or 24. The Carrier maintains that MBTA retained White to perform the work at issue.

Analysis

This is a rules case. For that reason, the Organization has the burden of proving its case by a preponderance of the evidence. Generally, in rules cases, the Board will examine the facts brought forward by the Organization and compare and analyze those facts against the relevant agreement provisions at issue.

The burden was on the Organization to prove that the work performed by White was under the Carrier's scope and authority. There is no evidence that the Carrier was under contract with MBTA to perform the work at issue. The Operating Agreement between the Carrier and the MBTA requires that any supplemental work to be performed by the Carrier on MTBA property must be agreed to by MBTA in writing. The Organization did not produce any documentation authorizing the Carrier to either perform the work in question or retain a contractor to perform the work in question.

The Board thoroughly reviewed all the evidence submitted by the Organization and finds no evidence to support its claims.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimants not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of December 2024.