

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45429  
Docket No. MW-47963  
25-3-NRAB-00003-220733**

**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 (Nelson Excavating) to perform Maintenance of Way work demolishing and removing four (4) concrete bridge piers located at Mile Post 664.7 on the Cincinnati Terminal Subdivision on January 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21 and 22, 2021 (System File 2021-04/21-00021 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants D. Hayes, J. Johnson, W. Lewis, T. Nuffer, J. Seto, B. Stepp and S. Thompson shall now each ‘... be compensated for (102.85) straight time hours and (57.42) overtime hours at their respective straight time 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.

Claimants D. Hayes, J. Johnson, W. Lewis, T. Nuffer, J. Seto, B. Stepp and S. Thompson ("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 June 1, 1999 Scope of Work agreement ("Agreement") between the parties. At issue is whether the Carrier violated the Agreement when it assigned outside forces (Nelson Excavating) to demolish and remove four (4) concrete bridge piers located at Mile Post 664.7 on the Cincinnati Terminal Subdivision on the dates referenced above in the statement of claim.

The Organization contends that the subject work is reserved by the first and second paragraphs of the Scope Rule contained in the Agreement; the subject work is customarily or traditionally performed by the Organization's covered members; the Carrier failed to comply with the advance notification and conference provisions for the claimed work prior to contracting out such work; and the defenses raised by the Carrier do not defeat the claim.

Conversely, the Carrier maintains that the tracks in question were no longer used in the performance of common Carrier service as they had been removed from service and abandoned prior to the work in question taking place.

By letter dated February 19, 2021, 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 Scope of Work Agreement requires, in part, that "all work in connection with the construction, maintenance, repair, inspection or dismantling of tracks, bridges,

buildings, and other structures or facilities *used in the operation of the carrier in the performance of common carrier service* on property owned by the carrier” be assigned to BMW employees. (Emphasis added). Here, the record evidence is that the piers at milepost CA 664.7 had been abandoned since 1989. Therefore, the work in question was not performed on a structure used in the operation of common carrier service. Accordingly, there is insufficient evidence to establish a violation by the Carrier.

**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 13<sup>th</sup> day of February 2025.