

BEFORE PUBLIC LAW BOARD NO. 6043**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
IBT RAIL CONFERENCE
and
ILLINOIS CENTRAL RAILROAD COMPANY****Case No. 83**

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it used outside contractors to supplant its existing workforce during overtime hours in an effort to deny overtime work opportunities for the Claimants, by assigning non-agreement employees to perform Maintenance of Way undercutting overtime work for the tunnel project on or near Robbs, Illinois beginning on May 27, 2009 and continuing through June 3, 2009 (System File C090527/IC-BMWED-2009-00028).
2. As a consequence of the violation referred to in Part 1 above, Claimants T. Schultz, P. Cobb, B. Wallace, T. Matlock, J. Cano, J. Hudson, II and J. Tucker shall "... each be allowed their respective time and one half rate of Foreman \$36.52, Machine Operator \$35.96, Trackman \$31.92 per hour and double time rate of \$48.70, \$47.12, \$42.56 respectively for all overtime hours worked which totals \$4285.44, \$4166.40, \$3745.28 respectively for each claimant."

FINDINGS:

The Organization filed the instant claim on behalf of the Claimants, alleging that the Carrier had violated the parties' Agreement when it used outside contractors and non-Agreement workers to perform overtime Maintenance of Way work in connection with a tunnel project near Robbs, Illinois, from May 27 through June 3, 2009, rather than assigning such work to the Claimants. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because there is no dispute that the parties had an understanding that the outside-contractor employees would work only twelve hours per day while performing track

undercutting work, because the parties had a further understanding that existing Carrier Maintenance of Way forces would perform this same work for the same amount of time with the outside forces on each work day, because the Carrier allowed the Claimants to work only twelve hours each day while it assigned the outside forces to continue performing the work for an additional twelve hours each day, because the Carrier's use of outside contractors to supplant its existing workforce during off hours denied that workforce of overtime opportunities, because there is no merit to the Carrier's defenses, and because the requested remedy is proper. The Carrier contends that the instant claim should be denied in its entirety because the Organization failed to meet its burden of proof, because the Carrier applied the Rules as written to this matter, because the Agreement consistently has been applied as it was in the instant case, and because there is no basis for any monetary compensation to the Claimants.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement when it used outside contractors for twenty-four hours a day and failed to use the Claimants for more than twelve hours per day. Therefore, the claim must be denied.

First of all, the Organization relies on what it calls "an understanding" that the outside contractor employees would only work twelve hours per day while performing the undercutting work. The Organization also states that the "understanding" included a provision that the Claimants would perform undercutting work for the same amount of

time that the outside forces worked each day. Although the Union alleges that this “understanding” was in place, there is no evidence of any such “understanding” in the record before the Board. If it was a verbal agreement, there is simply no reference to it other than in the Organization’s position statements.

Moreover, the record reveals that all of the Claimants did work at least twelve hours per day and some more than that. The Carrier had the minimum number of employees working on those days. Moreover, the Carrier argues that it has a unilateral right to subcontract work.

The Organization relies on language that states that the Carrier will not use outside contractors to supplant existing work force employees during off hours and rest days in an effort to deny the existing work force overtime opportunities. In this case, this Board cannot find that the Carrier violated that part of the Agreement. All of the Claimants worked a full day plus overtime for at least four hours and, in some cases, more than that. It is not physically possible for employees to work twenty-four hours per day, day after day.

The Carrier points out that it was involved in a week of “blitz” work to be accomplished. The Carrier had an outside contractor working twenty-four hours per day. The Carrier’s employees, including the Claimants, worked a minimum of four hours of overtime on each of the days that the subcontractor worked. All contractual language has to be looked at in reasonable terms. This Board must find that the Carrier did not violate the contract by not having the Claimants working twenty-four hours a day that week.


For all the above reasons, this claim must be denied.

AWARD:

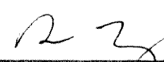
The claim is denied.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER
DATED: 7/31/13



ORGANIZATION MEMBER
DATED: 7/31/13