

REC'D JUL 24 2013

**BEFORE PUBLIC LAW BOARD NO. 6043**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION  
IBT RAIL CONFERENCE**

**and**

**ILLINOIS CENTRAL RAILROAD COMPANY**

**Case No. 85**

**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 steel tie replacement/installation overtime work for the tunnel project in Tunnel Three (3) near Robbs, Illinois beginning on May 31, 2009 and continuing through June 4, 2009 (System File C090528/IC-BMWED-2009-00038).
2. As a consequence of the violation referred to in Part 1 above, Claimants D. Lowe, Jr., R. Street, A. Hoh, and L. Sheppard shall ' . . . each be allowed their respective time and one half rate of Foreman \$36.52, Trackman \$31.92 per hour and double time rate of \$48.70, \$42.56 per hour respectively for all overtime hours worked which totals \$2678.84, \$2340.80 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 31 through June 4, 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 steel tie

replacement/installation 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 instead of the Claimants to perform overtime work in connection with a tunnel project near Robbs, Illinois, from May 31, 2009, through June 4, 2009. Therefore, the claim must be denied.

First of all, the Organization relies on "an understanding" that the outside contractor's employees would perform work for only twelve hours a day and that the Claimants would work for the same number of hours per day as the contractor's

employees. The Organization contends that the Carrier violated that Agreement when the Claimants were only allowed to work twelve hours per day and the subcontractor's employees worked around the clock.

The problem for the Organization is that there is no evidence of this alleged "understanding" in the record. The only time it is mentioned is as part of the Organization's arguments. In order to prove an "understanding," there must be more evidence to support it.

In addition, it is clear from the Agreement that the Carrier has the right to subcontract its work. There are some restrictions, and the Organization properly points to the language in Appendix C4, Subparagraph 3, that the Carrier will not use outside contractors to replace its existing workers during their off hours to deny the existing work force of overtime opportunities. In this case, the Carrier was able to use the Claimants for twelve hours per day, and it paid them overtime for the four extra hours each day. The Carrier was involved in a "blitz" project of work which effectively closed down the railroad. The Carrier used all of its own employees on an overtime basis and also allowed the contractor to work on a twenty-four hour basis for the eight days so that the work could be completed as soon as possible. It could not be expected that the Claimants could work twenty-four hours a day. It is not rational or even humanly possible for them to have done that.

As stated above, the Organization bears the burden of proof in cases of this kind. In this case, it has failed to prove with sufficient evidence that there was "an understanding" or that it was even humanly possible for the Claimants to have performed

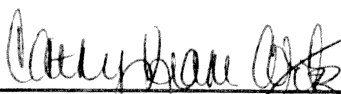
the work for which they are currently seeking a remedy. Therefore, the claim must be denied.

**AWARD:**

The claim is denied.



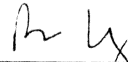
**PETER R. MEYERS**  
Neutral Member



**CARRIER MEMBER**

**DATED:**

7/31/13



**ORGANIZATION MEMBER**

**DATED:**

7/31/13