PUBLIC LAW BOARD 5564

In the Matter of Arbitration between:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION – IBT RAIL CONFERENCE

and

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION

Case No, 46
Award No. 46

THE ORGANIZATION'S STATEMENT OF THE CLAIM

This Decision resolves the Organization's claim as follows:

1. The Carrier violated the Agreement on February 15, 2011 when it assigned outside forces instead of Work Equipment Subdepartment employe J. Guerrero to excavate existing light pole bases at the 80th Avenue Depot (System File C110411/08-30-612 NRC).

2. As a consequence of the violation referred to in Part 1 above, Claimant J. Guerrero shall be compensated for eight (8) hours at his respective rate of pay.

STATEMENT OF THE CASE

Based on the record developed by the Organization and the Carrier, this Public Law Board (Board) finds the Parties herein to be a Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction over the Parties and the dispute.

This dispute is between the Brotherhood of Maintenance of Way Employes Division – IBT Rail Conference (BMWE or Organization) and the Northeast Illinois Regional Commuter Railroad Corporation (Metra or Carrier) (collectively the Parties). The dispute arises out of BMWE's claim that Metra violated the Parties' Agreement Rules 1, 2 and 3 when the Carrier used an outside contractor, Century Contractors (Century), to perform work of the Work Equipment Subdepartment.

The facts and on property handling of BMWE's claim are as follows:

The Parties agree on the material facts. They disagree on the application of the Agreement Rules to the facts.

The Claimant, Jose Guerro (Claimant or Guerro), is a Work Equipment Subdepartment employee who was on furlough at the time of events giving rise to the dispute. On February 15, 2011, for 8 hours, an outside contractor excavated light pole bases at the 80th Avenue Depot (80th Avenue). The dispute turns on two questions: whether the outside contractor was performing BMWE work covered by Rule 1(b) and whether Metra notified BMWE's General Chairman in advance of the date of the contracting transaction pursuant to Rule 1(c).

On April 11, 2011, BMWE submitted its claim asserting that the February 15, 2011 80th Avenue light pole excavation was Work Equipment Subdepartment work and that Metra did not notify the General Chairman of the Carrier's plans to contract out the work as far in advance as practical and, in any event, not less that 15-days in advance pursuant to the Agreement.

On May 24, 2011, Metra's representative denied the claim asserting,

> that the work . . . could not be performed by Metra employees because Metra does not own the proper equipment to perform the work safely and efficacy [sic].

On July 25, 2011, BMWE appealed the claim denial. BMWE's appeal reiterates the claim. In addition, the appeal included two photographs: one photograph of the Century equipment performing the 80th Avenue excavation and another photograph of identical Metra equipment parked at Blue Island. BMWE argued,

> [t]he Carrier's insistence that it does not own the equipment necessary to perform the work in question appears to be baseless.

On August 3, 2011, Metra denied the appeal. The Carrier asserted that "there is nothing in the rules cited that refers to work on bases for lights" and no evidence that

BMWE "employees have customarily performed work on bases for lights in the past" and the "work historically has been assigned to employees from other crafts." Metra concluded,

> [a]ccordingly, the Carrier was not required to use the claimant in this assignment or provide the Organization with advance notice of the intent to have a contractor perform the work.

On March 2, 2012, the claim was conferenced without resolution and BMWE progressed the claim for resolution before this Board.

The Agreement Rules provide, in material part, as follows:

RULE 1. SCOPE.

* * *

(b) Employees included within the Scope of this Agreement shall perform all work in connection with the construction, maintenance, repair, and dismantling of tracks, roadbeds, structures, facilities, and appurtenances related thereto located on the right-of-way or used in the operation of the Carrier in the performance of suburban passenger service.

(c) It is intent of this Agreement for the Carrier to utilize Maintenance of Way employees under the rules of this Agreement to perform the work included within the Scope of the Agreement; however, it is recognized that in certain specific in stances the contracting out of such work may be necessary provided one or more of the following conditions are shown to exist:

(1) Special skills necessary to perform the work are not possessed by its Maintenance of Way employees.

(2) Special equipment necessary to perform the work is not owned by the Carrier and/or is not available to the Carrier for its use and operation thereof by its Maintenance of Way employees.

* * *

> In the event the Carrier plans to contract out work because of one or more of the criteria described above, it shall notify the General Chairman in writing as far in advance of the date of the contracting transaction as is practicable, and in any event, not less than fifteen (15) days prior thereto. Such notification shall clearly set forth a description of the work to be performed and the basis on which the Carrier has determined it is necessary to contract out such work according to the criteria set forth above.

The Carrier's initial claim denial asserts the defense that "Metra does not own the proper equipment." This is a valid reason under Rule 1(c)(2) to contract out the work. However, BMWE's July 25, 2011 photographic evidence proved that Metra did own the identical equipment used by Century to perform the work.

Metra's August 3, 2011 claim denial abandons the defense that the Carrier does not own the proper equipment. Instead, Metra defends its contracting out of the work because: the Scope Rule does not refer to work on light bases; there is no evidence the work is customarily BMWE work; and the work historically has been assigned to other crafts. Metra argues that since it is not required to use the Claimant for the work, the Carrier is not required to provide advance notice of contracting out.

The Board does not agree.

Rule 1 plainly and expressly states that BMWE crafts,

> shall perform all work in connection with . . . dismantling . . . appurtenances . . . used in the operation of the Carrier in the performance of suburban passenger service.

The simple Merriam-Webster dictionary definition of an ***appurtenance*** is "an object that is used with or for something." Black's Law Dictionary defines an ***appurtenance*** as "something that belongs or is attached to something else."

Based on the plain and express language of the Rule 1(b) the Board finds that the 80th Avenue light pole bases were ***appurtenances*** used in the operation of the Carrier's suburban carrier service. For this reason, the February 15, 2011 light pole base excavation was covered by Rule 1(b) as dismantling of appurtenances which should have been

performed by the Claimant under Rule 2 and 3. Moreover, the record is clear that the Carrier failed to comply with Rule 1(c) when it provided no notice to the General Chairman that Century was contracted to perform work covered by Scope Rule 1.

As remedy, for both Agreement violations, the Claimant is entitled to 8 hours pay at the appropriate rate.

AWARD

The claim is sustained.

For the Organization:

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Public Law Board Advocate
BMWE–IBT

For the Carrier:

Tim Martin Hort
General Director - Labor Relations
Metra

Neutral Member:

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