

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. 48

Award No. 48

THE ORGANIZATION'S STATEMENT OF THE CLAIM

This Decision resolves the Organization's claim as follows:

1. The Carrier violated the Agreement beginning on May 17, 19 and 20, 2011 when it assigned outside forces (John Burns and DTI) instead of Bridge and Building (B&B) Department employees to install screw and glue tactile tiles on platforms at the Joliet Union Station on the Rock Island District (System File C110713/08-30-616 NRC).
2. As a consequence of the violation referred to in Part 1 above, Claimants D. Brim, R. Ortiz and S. Zavala are each entitled to be compensated twenty (20) hours at their respective straight time rates 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 Employees 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

by having outside contractors install glue-and-screw tactile tiles at the Joliet Union Station, Rock Island District (Joliet). Tactile tiles are installed along the platform surface edges as detectable warning surfaces for passengers standing or walking near the track. BMWWE maintains this work is Bridge and Building (B&B) Subdepartment work.

The facts are not disputed. The dispute turns on each Parties' interpretation of the Agreement.

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

On November 10, 2009, pursuant to Rule 1, the Carrier notified BMWWE that it intended to contract out the construction of new platforms at the Heritage Corridor Station in Joliet. The Carrier's stated reasons for contracting out were that Metra employees did not possess the special skills and the Carrier did not own the special equipment for the work. Relevant to this dispute, the notice stated that the construction of the new platforms included, "Remove and replace concrete panels and pre-cast concrete curb units on the station side platform."

On February 18, 2010, the Parties conferenced on the subcontracting notice. On February 19, 2010, Metra sent BMWWE a letter describing the conference, in material part, as follows:

During the conference, no specific objections were raised concerning the Carrier's intent to contract out this work. It is understood, however, that the Organization retains the right to raise objections based on further review of the information presented and to present claims based on developments during the actual performance of the work.

On July 13, 2011, BMWWE submitted a claim on behalf of Claimants, D. Brim, R. Ortiz and S. Zavala, who were on furlough at the time of the event giving rise to the claim. BMWWE's claim asserts that on May 17, 19 and 20, 2011 for 8 hours per day, the Carrier allowed outside contractors to install the screw-and-glue tactile tiles at the Joliet Union Station, Rock Island District. BMWWE asserted the Carrier violated Agreement Rules 1, 2 and 3 because the Carrier had not notified the Organization of the use of a contractor for the work which Work Equipment Sub-Department employees normally perform. As

remedy, BMWWE asserted the Claimants were entitled to compensation for 20 hours work or \$504.00 each.

On August 22, 2011, Metra denied the claim based on the Parties' February 18, 2010 conference with BMWWE. The Carrier asserted that at the February 18, 2010 conference it properly notified BMWWE of the Joliet contracting work in accordance with Rule 1.

On October 14, 2011, BMWWE appealed the denial asserting that the Agreement Rules,

specifically stipulates that a good faith attempt to reach an agreement concerning contracting out will be made and that contract employees will be given preference to assignments of work for which they are qualified and available.

BMWWE argued that Metra blatantly violated its obligation to engage in good faith discussions under Rule 1(c), and other Rules, when it allowed outside contractor forces to perform the work at the Joliet project. BMWWE argued as well that no special skills or equipment was required to perform the Joliet work normally performed by BMWWE forces.

On October 26, 2011, Metra responded to BMWWE's appeal asserting that its November 10, 2011 notice advised BMWWE of the Carrier's intent to contract out platform reconstruction. Metra stated that the November 10, 2009 notice provided a general outline of the Joliet work while the February 18, 2010 conference included a review of the detailed plans. In addition, Metra stated that at the conference BMWWE was offered a copy of the detailed plans but declined. Metra attached a copy of the plans to its response to be included in the record of on property handling. The attachment is entitled PROJECT SCOPE, and states, in material part, as follows:

DISTRIBUTION OF WORK

* * *

3. REMOVE GROOVED CONCRETE PANELS ON STATION SIDE PLATFORM AND REPLACE WITH TOPPING CONCRETE AND YELLOW TACTILE PANELS. THIS INCLUDES THE REMOVAL AND SUBSEQUENT REPLACEMENT OF THE EXISTING PRE-CAST CONCRETE CURB UNITS.

* * *

On April 4, 2012, the claim was conferenced without resolution and BMW progressed the claim for resolution before this Board.

Relevant and material to this claim, Rule 1 states:

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 instances 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.

(3) Time requirements exist which present undertakings not contemplated by the Agreement that are beyond the capacity of its Maintenance of Way employees.

(4) Federal and State laws specifically require the Carrier to submit such work to public bidding.

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.

If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the Carrier shall promptly meet with him for that purpose and the parties shall make a good faith effort to reach an agreement setting forth the manner in which the work will be performed. It is understood that when conditions 3 and/or 4 are cited as criteria for contracting work, the Carrier, to the extent possible under the particular circumstances, shall engage its Maintenance of Way employees to perform all maintenance work in the Maintenance of Way Department and construction work in the Track Subdepartment, with due consideration given to the contracting out of construction work in the Bridge and Building Subdepartment to the extent necessary. If no agreement is reached, the Carrier may nevertheless proceed with said contracting and the Organization may file and progress claims in connection therewith.

* * *

BMWE has the burden to prove the elements of its claim.

BMWE asserts installing the Joliet tactile tiles was within the Organization's scope of work pursuant to Rule 1. BMWE asserts that Metra failed to notify the General Chairman of this specific B&B Subdepartment work and failed to provide the Organization with the detailed plans of the work. In anticipation of Metra's defense, BMWE argues that

a Carrier defense that it is not required to piecemeal the work of a larger project is frivolous and without merit.

Metra asserts that BMWWE has not met its burden of proof to prove all requisite elements of the claim. Metra argues BMWWE was notified of the Carrier's intent to contract out Joliet platform work on November 10, 2009. Then, Metra argues, the Parties met in conference to discuss the details on February 18, 2010 and at that conference BMWWE declined to take copies of the plans. Metra argues for these reasons alone the agreement was not violated and the claim must be denied.

Metra asserts that the Joliet platform work involved far more work than cited in the Organization's claim. Metra says that the tactile tile installation was only a small portion of the overall platform project which could not be separated into smaller, fragmented and disconnected components. Metra argues BMWWE's requested remedy is not supported by the record or the Agreement. Accordingly, Metra concludes the claim is without merit and must be denied.

The on property record of the handling of this claim establishes that BMWWE's General Chairman received notice of Metra's intent to contract out the Joliet platform work on November 10, 2010. The record also proves that the Organization and the Carrier went over the plans and details of the project in conference on February 18, 2011. Furthermore, it was not until the Carrier started the Joliet project that BMWWE presented this claim alleging a violation of Rule 1, but only for the work of installing the Joliet platform tactile tiles. Simply stated, BMWWE raised no objection to the contracting out until the start of the project.

These unchallenged facts do not support a claim of violation of Rule 1(c) which is at the heart of the Organization's claim. In addition, the facts establish that contract for the Joliet work must be reasonably considered as a whole and of significant scale to be beyond the skills and equipment of BMWWE forces. In this regard, BMWWE has presented no evidence to the contrary. BMWWE's mere assertions of the Claim cannot be accepted as proof. The Claim must be supported with evidence and it is not.

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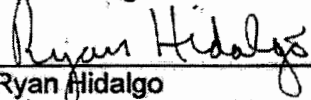
Moreover, the Organization seeks a remedy under the Agreement for only a portion of the whole project, the tactile tiles installation. Based on the scale of the contract for the Joliet platform reconstruction, Metra is not required to piecemeal out portions of the Joliet platform project so BMW employees could perform the narrow slice of work on the tactile tile installation. (See: Third Division SBA No. 1048, Award 161, Referee Hanft).

Based on the entire record, the Board finds the Claim must be denied.

AWARD

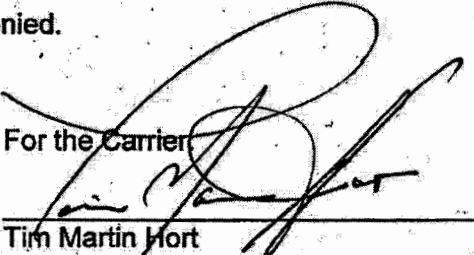
The claim is denied.

For the Organization:



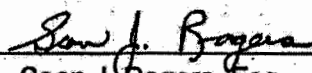
Ryan Hidalgo
Public Law Board Advocate
BMW-IBT

For the Carrier:



Tim Martin Hort
General Director - Labor Relations
Metra

Neutral Member:



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