

BEFORE PUBLIC LAW BOARD NO. 6043

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION
IBT RAIL CONFERENCE
and
ILLINOIS CENTRAL RAILROAD COMPANY**

Case No. 102

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

1. The Carrier violated the Agreement when it supplanted its existing workforce in an effort to deny overtime work opportunities for Claimants R. Chamness, S. Sorn, M. Decker, C. Dupree, J. Killingham, P. McGrath, I. Mitchell, T. Patterson, P. Pike, G. Savage, J. McMahan and J. Hixson by assigning outside contractor employees to perform overtime Maintenance of Way work (install crossties) between Mile Posts 100 and 108.3 on the Gilman Subdivision beginning on November 30 and continuing through December 6, 2010 (System File A110117/IC-BMWED-2011-00002 ICE).
2. As a consequence of the violation referred to in Part 1 above, the Claimants shall each be compensated fifty (50) straight time hours and twenty (20) overtime hours at their respective rates of pay for the loss of work opportunities during the cited claim period.”

FINDINGS:

The Organization filed the instant claim on behalf of the Claimants, alleging that the Carrier violated the parties’ Agreement when it had outside contractor employees perform the Maintenance of Way work of installing crossties during the period from November 30 through December 6, 2010, thereby depriving the Claimants of these work opportunities. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the work at issue is contractually reserved to Carrier forces, because the Carrier’s use of outside forces to perform this work supplanted the Carrier’s existing workforce

and denied them overtime work opportunities, because there is no merit to the Carrier's defenses, and because the requested remedy is proper under all of the relevant circumstances. The Carrier contends that the instant claim should be denied in its entirety because the Organization has failed to meet its burden of proof, because no violation of the Controlling Agreement has occurred in this matter, because Appendix C-3 to the Agreement makes clear that the Carrier has the unilateral right to subcontract work without notice to the Organization, because Appendix C-4 states that the Carrier will not be required to call employees from another location in lieu of using a subcontractor, and because the monetary portion of the claim is inappropriate because there has been no proof of financial loss.

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 assigned an outside contractor to perform work installing crossties on November 30 through December 6, 2010. At the time that this occurred, the Carrier had the unilateral right to contract out work within the scope of the Agreement pursuant to Appendix C-3. Moreover, the Claimants were working one hundred twenty-five miles away installing ties on a different line in downtown Chicago. Appendix C-4 states that the Carrier will not be required to call individuals from another location to perform work in lieu of using an outside contractor.

With respect to the lack-of-notice issue raised by the Organization, at the time that

this occurred, there was no requirement of notice to the Organization.

Since the Organization bears the burden of proof in cases of this kind and has failed to meet that burden, this Board has no choice other than to deny this claim.

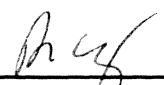
Therefore, the claim will be denied.

AWARD:

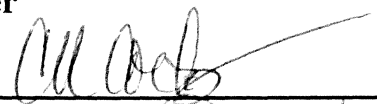
The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER
DATED: 6/24/15



CARRIER MEMBER
DATED: 6/24/15