

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 108

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

1. The Carrier violated the Agreement when it used an outside contractor, instead of Claimants G. Smith, C. Steward, H. Galloway and C. Patton, to perform the Maintenance of Way work of rebuilding a protection levee at Mile Post 984.4 on the McComb District beginning February 3, 2011 and continuing (System File C110328/IC-BMWED-2011-00029 ICE).
2. As a consequence of the violation referred to in Part 1 above, the Claimants shall each be compensated for ‘ . . . eight (8) straight time hours per day at their respective straight time rates of pay for a maximum of \$201.68 and a minimum of \$176.40 per day each which totals as of the date of this claim for (34) days a maximum of \$6,857.12 and a minimum of \$5,997.60 respectively’”

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 rebuilding a protection levee beginning on February 3, 2011, and continuing thereafter, thereby depriving the Claimants of this work opportunity. 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’s Maintenance of Way and Structures Department forces, because the Carrier failed to notify the General Chairman in writing and in advance of its intent to contract out this work, because there is no merit

or validity 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 the Carrier has applied the Agreement in its entirety and as written, because Rule 2 and Appendix C do not apply to the situation at issue, and because the monetary portion of the claim is inappropriate.

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 in September of 2001, the Carrier and the Organization entered into an Agreement which gave the Carrier the unilateral and unfettered right to contract out work within the scope of the Agreement, and the Carrier was not required to give any advance notice to the Organization of the contracting out of that work within their scope. That Agreement remained in effect for over nine years. In a letter dated December 3, 2010, the Organization invoked the sixty-day cancellation clause which ended the no-notice part of that Agreement.

The claim in this case alleges that beginning in February of 2011, the Carrier used an outside contractor to rebuild a protection levee. The claim alleges that the Carrier failed to give the appropriate notice required of that contracting out of work.

A review of the record in this case makes it clear that the work at issue had begun before the February 3, 2011, date, the date on which the Carrier was once again required to give notice to the Organization of any contracting out of work that would be occurring.


In other words, the new restrictions with respect to the requirement of notice went into effect after this rebuilding of the protection levee work at issue had already begun.

Consequently, this Board has no choice other than to find that the Carrier did not violate the Agreement when it failed to give notice that it would be contracting out the work of rebuilding a protection levee at issue since the work at issue began before the requirement of notice went into effect. In other words, the work at issue that was performed was required for a project that commenced prior to the invocation of the cancellation clause and prior to the expiration of the contracting provision.

Since the Organization failed to meet its burden of proof in this case, this Board has no choice other than to deny the claim.

AWARD:

The claim is denied.


PETER R. MEYERS
Neutral Member
ORGANIZATION MEMBER

DATED: 6/26/15


CARRIER MEMBER

DATED: 6/26/15