

BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 122

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

1. The Carrier violated the Agreement when it assigned an outside contractor, instead of Claimant G. Smith, to perform the maintenance of way work of flagging between Mile Posts 858.98 and 859.17 on the Gulf Division beginning February 3, 2011 and continuing (System File No. IC-BMWED-2011-00030).
2. As a consequence of the Carrier’s violation, Claimant is entitled to be compensated for all hours worked by the outside contractor during the claim period.

FINDINGS:

The Organization filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the parties’ Agreement when it had outside forces, instead of the Claimant, perform flagging duties in connection with a track rehabilitation project beginning on February 3, 2011, thereby depriving the Claimant 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 the Carrier’s Maintenance of Way and Structures Department forces, because the Carrier failed to notify the General Chairman in advance and in writing 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 no violation of the Controlling Agreement has occurred in this matter, because flagging work is not exclusive to the BMWED craft, because Rule 2 and Appendix C do not apply to this situation, and because the monetary portion of the claim is inappropriate.

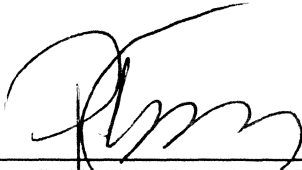
The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the flagging work in question belongs to the employees represented by the Organization. The Carrier has demonstrated that numerous crafts and employees, as well as subcontractors, have performed flagging duties in the past. Since flagging is not exclusively work performed by the members of this Organization, and the Carrier is not restricted by the Agreement language, this Board cannot find that there was any violation of the Agreement.

The Organization bears the burden of proof in this type of a case. It has failed to meet that burden. Therefore, the claim must be denied.

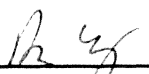
AWARD:

The claim is denied.




PETER R. MEYERS

Neutral Member



ORGANIZATION MEMBER

DATED: 6/26/15



CARRIER MEMBER

DATED: 6/26/15