

**BEFORE PUBLIC LAW BOARD NO. 6043**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION  
IBT RAIL CONFERENCE**

**and**

**ILLINOIS CENTRAL RAILROAD COMPANY**

**Case No. 128**

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

1. The Carrier violated the Agreement when it assigned outside forces (Right of Way, Inc.), instead of Claimant M. Alvarez, to perform flagging duties in conjunction with track rehabilitation work between Mile Post 12 and Mile Post 13 and/or Main 1 and Main 2 Track between Mile Post 4 and Mile Post 5 and Mile Post 14 and Mile Post 14.5 on the Chicago Subdivision at Kensington Station near Chicago, Illinois on March 8, 10, 11, 14, 15, 16, 17, 18, and 21, 2011 and continuing (System File C110506/IC-BMWED-2011-00053 ICE).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Alvarez shall now be compensated for ‘ . . . a total of eight (8) straight time hours each day continuing forward at the Foreman/Flagman’s respective straight time rate of pay of \$25.21 per hour or \$201.68 per day which as of the date of this claim May 06, 2011 totals \$8,873.92 but continues forward.’”

**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 March 8, 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.

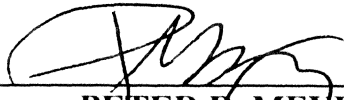
The parties being unable to resolve their dispute, this matter came before this Board.


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.

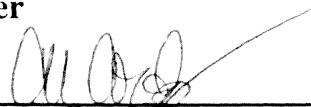
The Organization bears the burden of proof in this type of a case. It has failed to meet that burden. Therefore, the claim must be denied.

**AWARD:**

The claim is denied.

  
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**PETER R. MEYERS**  
Neutral Member

  
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**ORGANIZATION MEMBER**  
DATED: 4/24/15

  
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**CARRIER MEMBER**  
DATED: 4/24/15