

BEFORE PUBLIC LAW BOARD NO. 6043

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

and

ILLINOIS CENTRAL RAILROAD COMPANY

Case No. 324

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

1. The Carrier violated the Agreement when it used outside forces (Roadway Worker Services) to perform the Maintenance of Way work of thermite welding at or near Mile Post 20 on the Edison/Chicago Subdivision beginning on May 3, 2011 and continuing through May 17, 2011 (System File A1 10503/IC-BMWED-2011-00088 ICE).
2. The Agreement was further violated when the Carrier failed to comply with the advance notification and conference provisions in connection with its plans to contract out the above-described work and failed to assert good-faith efforts to reduce the incidence of subcontracting and increase the use of Maintenance of Way forces as required by Appendix C and Appendix C-1 (the December 11, 1981 National Letter of Agreement).
3. As a consequence of the violations referred to in Parts 1 and/or 2 above, Claimants S. Sears and B. Klimowski shall be compensated for (8) straight time hours per day at their respective rates of pay beginning on May 3, 2011 and continuing through May 17, 2011."

FINDINGS:

The Organization filed a claim on behalf of the Claimants, alleging that the Carrier violated the Agreement by using outside forces to perform Maintenance of Way work during the period from May 3 through May 17, 2011, and by failing to comply with the Agreement's notice and conference provisions in connection with its plans to contract out the work at issue. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety

because the work at issue is clearly reserved to Carrier's Maintenance of Way and Structures Department forces, because the Carrier failed to comply with the Agreement's advance notice and conference provisions relating to its plans to contract out the work at issue, because the Carrier failed to assert a good-faith effort to reduce subcontracting and increase the use of Maintenance of Way forces, because there is no merit to the Carrier's defenses, and because the requested remedy is appropriate. The Carrier contends that the instant claim should be denied in its entirety because the Carrier complied with its notice and conference obligations, because the Carrier was permitted to contract out the work in question, because the Organization has failed to meet its burden of proof, and because the requested remedy is unsubstantiated, excessive, and punitive.

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 subcontracted work of thermite welding at or near Mile Post 20 on the Eidson/Chicago Subdivision in May 2011.

First of all, although the Organization alleges that there was no notice and meeting to discuss the subcontracting, the record reveals that the Carrier did provide a timely notice and a conference was held with the Organization concerning the proposed subcontracting.

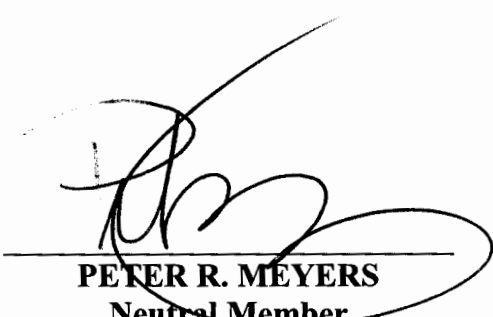
With respect to the merits, the record is clear that the Carrier did not have sufficient equipment to perform the work involved in this matter. The record is evident

that even if the Carrier rented the equipment, there was no one there to perform the work because all of the forces were busy working at the time. No employees lost any work. The Carrier had timeframes that had to be met, and they were met by using the outside forces.


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

AWARD:

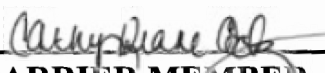
The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER
DATED: July 24, 2018



CARRIER MEMBER
DATED: July 24, 2018