

BEFORE PUBLIC LAW BOARD NO. 6043

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

and

ILLINOIS CENTRAL RAILROAD COMPANY

Case No. 325

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

1. The Carrier violated the Agreement when it used outside forces (Hulcher) to perform the Maintenance of Way work of unloading and distributing track panels near the Occidental Plant on the Baton Rouge Subdivision on May 6, 2011 (System File A1 10624/IC-BMWED-2011-00084 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 J. Thomas, D. Saucier, C. Smith, M. Moman, D. Mathers and E. Walton shall each be compensated for (8) straight time hours."

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 on May 6, 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 Organization failed to prove that the work at issue must be assigned to Maintenance of Way forces, 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 unloading and distributing track panels near Occidental Plant on the Baton Rouge Subdivision in May of 2011.

First of all, the Organization claims that the Carrier failed to comply with the notice and conference requirement of the rule. However, in the record, there is a copy of the notice and the record establishes a conference was held regarding the notice. Therefore, that portion of the Organization's claim is denied.

With respect to the merits, this Board must find that the Organization failed to


prove that the Carrier did not need specialized equipment that was apparently not available at the time. The record reveals that no employees represented by the Organization were on furlough and could be recalled to perform the work. The record reveals that all of the Claimants were fully employed during the time of this subcontracting and they did not lose any work opportunity.

The Organization claims that the Carrier is not fully staffed and does not have enough employees to perform the work. However, there is nothing in the record to support that claim or the Organization's claim that the Carrier is not following the letter and spirit of the December 11, 1981, Letter of Agreement.


Since the Organization has failed to meet its burden of proof in this matter, 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 _____