

**BEFORE PUBLIC LAW BOARD NO. 6043**

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

**and**

**ILLINOIS CENTRAL RAILROAD COMPANY**

**Case No. 346**

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

1. The Carrier violated the Agreement when it assigned outside forces to perform Maintenance of Way work (replacing steel floor beams, steel stringers and ties) on the Mississippi River drawbridge between Mile Posts 181.7 and 182.2 on the Western District near Dubuque, Iowa beginning on February 20, 2012 and continuing (System File CI20413/IC-BMWED-2012-00021 ICE).
2. The Carrier violated the Agreement when it failed to notify the General Chairman in writing in advance of its plan to contract out the claimed work.
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants J. Wagner, J. Spahn, T. Gille, S. Lumsden, K. Nie, K. Stocks, B. Ott, R. Martin, T. Jackson, W. Miller, D. Shea and C. Earle must now each be compensated for eight (8) hours' straight time and for two (2) hours' overtime for each day the contractors were allowed to work beginning on February 20, 2012 and continuing."

**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 beginning on February 20, 2012, and continuing, and by failing to comply with the Agreement's advance notice provision 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 work at issue is clearly within the scope of the Agreement, because the Carrier failed to comply with the Agreement's advance notice provision 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 exclusivity is not a necessary element to be demonstrated in contracting-out claims, because the Carrier failed to comply with the August 2013 global settlement in connection with this case, 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 the work of replacing steel floor beams, steel stringers, and ties on the Mississippi River Draw Bridge between Mile Post 181.7 and 182.2 on the Western District near Dubuque, Iowa, in February of 2012.

First of all, the Organization claims that there was no notice and conference before the subcontracting involved occurred. However, a review of the record reveals that notice was provided to and conferenced with the Organization. Consequently, that aspect of the Organization's argument is denied.


With respect to the contracting out, the Carrier has established that the subcontracting of the work in question had been done in the past and that the project involved here required outside contractor services and equipment. Moreover, there were no Organization-represented employees who were on furlough who could have performed the work. No Organization-represented employees were deprived of any work opportunities.

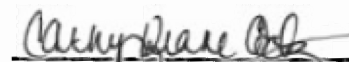
It is fundamental that the Organization bears the burden of proof in cases of this kind. In this case, the Organization has simply failed to meet that burden. Therefore, this claim must be denied.

**AWARD:**

The claim is denied.

  
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**PETER R. MEYERS**  
Neutral Member

  
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**ORGANIZATION MEMBER**  
**DATED:** July 24, 2018 \_\_\_\_\_

  
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**CARRIER MEMBER**  
**DATED:** July 24, 2018 \_\_\_\_\_