

BEFORE PUBLIC LAW BOARD NO. 6043

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

and

ILLINOIS CENTRAL RAILROAD COMPANY

Case No. 347

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 track work (work on a drawbridge) at the Dubuque Drawbridge Mile Post 182 on the Dubuque Subdivision near Dubuque, Iowa beginning on August 13, 2012 and continuing (System File C121005/IC-BMWED-2013-00029 ICE).
2. The Agreement was further violated when the Carrier failed to notify the General Chairman in writing of its intent to contract out the aforesaid work and failed to make a good-faith effort to reduce the incidence of contracting out scope covered work and increase the use of its Maintenance of Way forces as required by Appendix C and the December 11, 1981 National Letter of Agreement.
3. The claim referenced in Part (1) above, as filed by Vice Chairman D. McGuire on October 5, 2012 to Senior Manager Structures – S. Scola, shall be allowed as presented because said claim was not disallowed by Senior Manager Structures – S. Scola in accordance with Rule 34(a).
4. As a consequence of the violations referred to in Parts (1), (2) and/or (3) above, Claimants M. Anderson, J. Spahn, T. Gille, K. Stocks, J. Wagner, C. Nichols, D. Claassen, T. Jackson, J. Weber and D. Doubeck shall be allowed a total of eight (8) straight time hours per day and four (4) time and one-half hours per day at their respective rates of pay beginning August 13, 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 August 13, 2012, and continuing; by failing to comply with the Agreement’s advance notice and conference provisions in connection with its plans to

contract out the work at issue; and by failing to disallow the claim in accordance with the Agreement. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Carrier violated Rule 34 of the Agreement when it failed to disallow the Organization's initial claim, 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 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 there is no evidence that the Organization submitted a claim in October 2012, because the Organization has failed to meet its burden of proving a violation of the Agreement occurred, and because the Organization has failed to demonstrate that the Claimants are entitled to any remedy.

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 claim should be allowed based on Rule 34 because it has failed to show, with sufficient proof, that the Carrier received a claim dated October 5, 2012. In response to the Organization's March 18, 2013, claim, arguing that

the claim should be allowed as presented, the Carrier stated in its response:

The Organization alleges, that your October 5, 2012, letter was never answered by the Carrier. The Carrier is not in receipt of any such letter. Therefore, we were not able to provide any such response and this claim is barred from further handling.

According to the record, the Organization never submitted any evidence that it had submitted an earlier claim in October of 2012. Consequently, the Organization's position that the claim should be allowed as presented is denied.

With respect to the merits, this Board has reviewed the record, and we find that the Organization has failed to present sufficient evidence that the bridge reconstruction that was involved in this case had been customarily performed by the employees represented by the Organization. The Carrier took the position in its May 14, 2013, letter that the work has been performed by non-craft employees "without exception." The Carrier asserts that the work on the Dubuque drawbridge has been routinely performed by contractor employees. The work involved specialized work on a bridge that spans the Mississippi River. Special equipment such as tugboats and barges and cranes were necessary, and the Carrier does not have that equipment.


It is fundamental that the Organization must present sufficient evidence in order to sustain its burden of proof. In this case, the Organization has failed to meet that burden of proof. Therefore, this claim must be denied

AWARD:


The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER
DATED: July 24, 2018



CARRIER MEMBER
DATED: July 24, 2018