

REC'D JUL 24 2013

**BEFORE PUBLIC LAW BOARD NO. 6043**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION  
IBT RAIL CONFERENCE  
and  
ILLINOIS CENTRAL RAILROAD COMPANY**

**Case No. 84**

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

1. The Carrier violated the Agreement when it used outside contractors to supplant its existing workforce during overtime hours in an effort to deny overtime work opportunities for the Claimant, by assigning non-agreement employees to perform Maintenance of Way tie loading, unloading, disbursement and replacement/installation overtime work for the tunnel project on the Bluford Subdivision near Reevesville, Illinois beginning on May 26, 2009 and continuing through May 31, 2009 (System File C090526/IC-BMWED-2009-00034).
2. As a consequence of the violation referred to in Part 1 above, Claimant T. Miller shall each be compensated for twenty (20) hours at his respective time and one-half rate of pay and forty (40) hours at his respective double time rate of pay."

**FINDINGS:**

The Organization filed the instant claim on behalf of the Claimant, alleging that the Carrier had violated the parties' Agreement when it used outside contractors and non-Agreement workers to perform overtime Maintenance of Way work in connection with a tunnel project near Reevesville, Illinois, from May 26 through 31, 2009, rather than assigning such work to the Claimant. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because there is no dispute that the parties had an understanding that the outside-contractor employees would work only twelve hours per day while performing the claimed work, because the parties had a further understanding that existing Carrier

Maintenance of Way forces would perform this same work for the same amount of time with the outside forces on each work day, because the Carrier allowed the Claimants to work only twelve hours each day while it assigned the outside forces to continue performing the work for an additional twelve hours each day, because the Carrier's use of outside contractors to supplant its existing workforce during off hours denied the Claimant of overtime opportunities, because there is no merit to the Carrier's defenses, and because the requested remedy is proper. The Carrier contends that the instant claim should be denied in its entirety because the Organization failed to meet its burden of proof, because the Carrier applied the Rules as written to this matter, because the Agreement consistently has been applied as it was in the instant case, and because there is no basis for any monetary compensation to the Claimant.

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 used outside contractors to perform work on overtime for the tunnel project near Reevesville, Illinois, between May 26, 2009, and May 31, 2009. Therefore, the claim must be denied.

The record reveals that the Carrier was performing a "blitz" of work projects that consisted in part of closing down the railroad for more than a week. The Carrier needed work to be performed twenty-four hours per day. Although the Organization has established that the Agreement holds that the Carrier will not use outside contractors to

replace its existing employees during their off hours to deny the existing work force of overtime work opportunities, it is clear from this record that the Claimant worked at least twelve hours on all of the days at issue. It is true that the Carrier had the subcontractor working twenty-four hours, but it would be effectively impossible for an employee to have worked twenty-four hours a day for a week. It is fundamental that an Agreement must be read with rationality and it would not make sense, nor would it be possible, for employees to work twenty-four hours a day for a week.

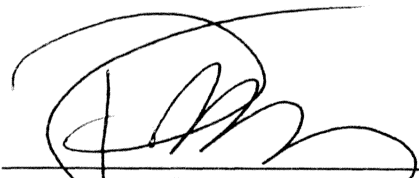
Moreover, the Union relies on an “understanding” that the outside contractor employees would only work twelve hours per day while performing their work. Moreover, this “understanding” made it clear that the subcontracted employees would not work any longer than the Claimant, which was essentially a twelve-hour day. The problem for the Organization is that there is no evidence of this “understanding” anywhere in the record, except in the Organization’s argument.


It is fundamental that the Organization bears the burden of proof in cases of this kind. In the Agreement, the Carrier has retained the right to use outside contractors. The Agreement has some limits on the use of those outside contractors. However, with respect to the position taken by the Organization in this case, there is no restriction that the Carrier on a major project which has to get done in a hurry must utilize its own employees twenty-four hours a day for seven days in a row.


For all the above reasons, the claim must be denied.

**AWARD:**

The claim is denied.

  
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**PETER R. MEYERS**  
Neutral Member

  
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**CARRIER MEMBER**  
**DATED:** 7/31/13

  
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**ORGANIZATION MEMBER**  
**DATED:** 7/31/13