

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 7163

CASE NO. 422

PARTIES)	BROTHERHOOD OF MAINTENANCE OF WAY
)	EMPLOYES DIVISION – IBT RAIL CONFERENCE
)	
TO)	VS.
)	
DISPUTE)	CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned outside forces to perform Maintenance of Way Scope covered work (repairing Carrier roads) at Mile Post BE 4.6 at the Cincinnati Terminal, Louisville Division on June 4, 2018 instead of assigning Maintenance of Way employees J. Gibson, P. Trappe, P. McConnell and B. Baker thereto (System File L60811618/18-32245 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimants J. Gibson, P. Trappe, P. McConnell and B. Baker ‘... shall now be paid an equal portion of Fifty-Six (56.0) hours of overtime pay at the Facilities Mechanic (074) rate of pay and that all time be credited toward vacation and retirement for the Claimants.’***’ (Employees’ Exhibit ‘A-1’).”

FINDINGS:

The Board, upon the whole record and all the evidence, finds that: the Carrier and the Employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved on June 21, 1934. This Board has jurisdiction over this dispute involved herein. Parties to said dispute were given due notice of hearing.

STATEMENT OF FACTS:

On June 4, 2018, the record reflects that the Carrier assigned contractors to perform work of repairing roads on the Louisville Division. These outside contractors utilized seven (7) employees to make road repairs using wheelbarrow, hoe and shovel to mix concrete and fill holes in the Carrier’s roads through the Right of Way to the Main Cincinnati Terminal. Although the Maintenance of Way employees were fully qualified and available, the record reflects that they were not utilized. Thus, the Organization filed a claim by way of a letter, dated June 11, 2018 to seek compensation for scope-covered work. There was a claims conference on August 14, 2018, but there was no resolution of this claim.

It is the position of the Organization that filling potholes clearly belongs to the Maintenance of Way Employees, as noted by the Scope Rule of the June 1, 1999 Agreement. Moreover, the Organization also points to "Appendix M" regarding subcontracting and its prohibition and its continuing applicability. In addition, the Organization asserts that the Carrier also failed to give a written, advance notice of its intention to subcontract, as required by the Scope Rule and the 1981 National Letter of Agreement. Due to these violations of the Scope Rule, MOA #1, Rules 1, 3, 4, 11, and 17 of the Agreement, the Organization reasons that this claim should be sustained.

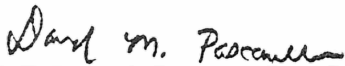
On the other hand, the Carrier asserts that the Organization has not shown that road grading is scope-covered. In addition, it has not shown that the Brotherhood of Maintenance of Way Employees (BMWED) forces have customarily performed the road grading to the exclusion of outside contractors, as required. Moreover, the Carrier concludes that the Organization failed to fulfill its burden of proof which warrants a denial of its claim.

OPINION OF THE BOARD:

After a careful analysis of the record, the Board finds the Organization's argument to be persuasive in its rationale and usage of past practice as performed by its members. Based on the foregoing, this claim must be sustained.

AWARD:

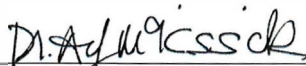
This claim is sustained. The Carrier is directed to comply with this Award on or before thirty (30) days following the Award date below.



David M. Pascarella
Employee Member
BMWED-IBT



John Nilon, Esq.
Carrier Member
CSX Transportation Representative



Dr. A. Y. McKissick, Referee

DATE: February 9, 2021