

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 7163

CASE NO. 427

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 (Lang Environmental, Inc.) to perform Maintenance of Way Scope covered work (preparation for steel replacement, preparation for painting and actual painting) that was on CSX property (C&C Bridge) between Mile Posts CA 662.9 and CA 664.9 at the Cincinnati Terminal, Louisville Division on April 28, 2018 and continuing instead of assigning Maintenance of Way employees J. Garland, J. Peterson, J. Johnson, F. Pierce, T. Nuffer, W. Pittman, S. Thompson and J. Wagner thereto (Carrier’s File 18-68621 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimants J. Garland, J. Peterson, J. Johnson, F. Pierce, T. Nuffer, W. Pittman, S. Thompson and J. Wagner ‘... shall now be compensated for any lost wages including all straight time and all overtime hours being worked by the non-agreement employees beginning April 28, 2018 and continuing until this matter is corrected.’ (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 April 28, 2018, the Carrier assigned outside forces (Lang Environmental, Inc.) to perform work in preparation for steel replacement as well as painting. The Organization filed a claim on June 14, 2018, asserting this work was reserved for Brotherhood of Maintenance of Way Employees (BMWE) forces only. On October 10, 2018, the Carrier denied its claim. Subsequently, there was a claims conference, but there was no resolution.

It is the Carrier's position that subcontracting involved lead abatement and encapsulation, not scope-covered work. That is, the Carrier asserted that this work involves procedures and processes that was much more complicated than just painting. Specifically, the Carrier describes this work also as hazardous and dangerous, requiring specialized training and certification. Thus, the Carrier concludes that this claim should be denied.

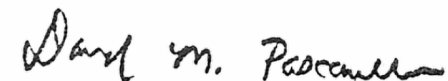
On the other hand, it is the position of the Organization that the painting and all bridge work is reserved work for BMW forces, as established by the Scope Rule and MOA #2, Section 5 (September 2009). Besides, the Organization points out that the Carrier also failed to notify the Organization of its intent to use outside forces, as required. Based on the foregoing, the Organization requests that this claim be sustained.

OPINION OF THE BOARD:

After a careful analysis of the record, the Board finds that the Carrier's argument regarding its use of a subcontractor with specialized training and certification for lead abatement and encapsulation compelling under these unique circumstances. Accordingly, this claim by the Organization shall be denied.

AWARD:

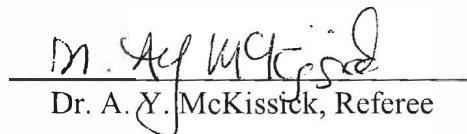
This claim is denied.



David M. Pascarella
Employee Member
BMWED-IBT



John Nilon, Esq.
Carrier Member
CSX Transportation Representative



Dr. A. Y. McKissick, Referee

DATE: February 9, 2021