

BEFORE PUBLIC LAW BOARD NO. 7007

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
and
MASSACHUSETTS BAY COMMUTER RAILROAD**

Case No. 40

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

1. The Carrier violated the current Agreement, specifically the Scope Rule and Rule 24 – Contracting Out when it contracted out work Scope covered culvert work on March 26 & 27, 2010 at MP 32.05 on the Fitchburg Line without proper advance notice to the Organization.
2. For this violation the Organization is requesting that the Carrier be required to compensate Claimants J. Cronin, D. Christian, R. Shanley, P. George, J. Anderson, P. Tammaro and S. Nichols a total of 24 hours at their respective straight time and overtime rates of pay."

FINDINGS:

The Organization filed the instant claim on behalf of the Claimants, alleging that the Carrier violated the parties' Agreement when it contracted out certain Scope-covered work without proper notice to the Organization. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Agreement requires the Carrier to give at least fifteen days' notice to the General Chairman of its intent to contract out such Scope-covered work, because the work in question was not emergency in nature in that the Carrier itself described the work as being due to weather issues that had accumulated over the course of months, and because the work in question belonged to the BMWED members but there was no discussion as to how this work was performed because of the lack of notice from the Carrier. The Carrier contends that the instant claim should be denied in its entirety

because it was unable to give the required fifteen-day notice to the Organization due to the emergency nature of the work, because the Carrier notified the Organization as soon as possible and the parties made a good-faith effort to resolve the dispute over how to accomplish the work, and because the Organization's employees were involved in pumping around the clock during the relevant time period and one of the original Claimants actually refused the overtime.

The parties being unable to resolve their dispute, this matter came before this Board.

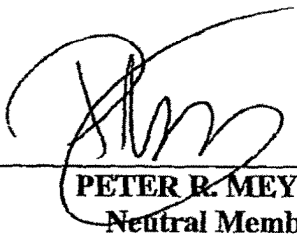
This Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement when it contracted out the work involving culvert work on March 26 and 27, 2010. Therefore, the claim must be denied.

Although the advance notice that was issued to the Organization was not fifteen days ahead of the scheduled work, the record makes it clear that the Carrier was operating in an emergency situation. There were several storms between March 15 and March 30 that had flooded much of the service area. The substantial rainfall had eroded the track bed, and the Carrier did give the Organization notice as soon as possible, although it did not give the Organization the required fifteen-day notice. The Organization's employees were involved in pumping around the clock during that time. Some shadowed the contractor. The Carrier has shown that it was necessary for it to contract out the work due to the emergency situation and needed to use certain types of heavy equipment to replace the culvert.

Emergency situations are exceptions to the rules requiring notice. This Board cannot find that the Carrier violated the Agreement when it contracted out the work at issue. Therefore, the claim must be denied.

AWARD:

The claim is denied.

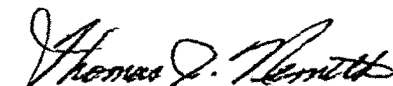


PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: 11/17/11

 I AGREE

ORGANIZATION MEMBER

DATED: 10/26/11