



**Brotherhood of Maintenance of Way Employees  
Division of the International Brotherhood of Teamsters  
United Passenger Rail Federation**

**Renato Rufo**  
Vice Chairman – District 6  
P.O Box 114482  
North Providence, RI. 02911-9998

**Phone:** 401-829-2909  
**Fax:** 401-454-0760  
**Email:** renatorufo@verizon.net

July 18, 2022

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Certified Mail Delivery # 7018 0360 0000 3428 5913

Mr. Christopher Richtarich  
Manager Labor Relations, Engineering  
3<sup>rd</sup> Floor  
1 Massachusetts Ave, NW  
Washington, D.C. 20001

Re: **01-LCR-21-1121**  
**Conn River Bridge, MP 106.89**  
**Old Saybrook & Old Lyme, CT.**

Mr. Richtarich,

This letter is regarding our last conference call on June 29, 2022, in connection with the Carrier's intended project 01-LCR-21-1121, the Connecticut River Bridge Replacement at or near MP 160.89. It has become the Organization's understanding that all the track surfacing work in connection with this intended bridge replacement project will be assigned to and performed by BMWED represented forces. Additionally, we understand that BMWED forces will be assigned to the work of connecting existing tracks to the tracks spanning the new bridge, work we generally refer to as the "throws and tie-ins", or "realignments". Further our understanding is that BMWED forces will be responsible for protections at this location, including contractor and RWP protections, NORAC protections and any piloting of equipment as may be necessary.

Our dissatisfaction with the project results from the announcement that the Carrier intends to solicit outside forces to install track (ties, timbers, rail, miter rails, guard rails and assorted fasteners), on or across the proposed new bridge. This letter formally advises the Carrier of our objections should the Carrier proceed with the use of outside forces to install tracks on this project at this location.

The Organization's position remains firm regarding our members being assigned to and performing all the intended new and existing track work related to this project, which includes but is not limited to the construction, installation and surfacing of the following Tracks:

WEST END:

- From existing Track to New West End Bridge Abutment (2 new tracks, Approx 1,800' per track).
- From New West End Bridge Abutment to New Movable Span (2 new tracks, Approx 1,000' per track).
- West End cut & throws with lateral realignment and surfacing (from 4" below bottom of tie) up to New Movable Span.
- Installation of all required Guard Rails and Miter Rails on both Tracks.

EAST END:

- From Existing Track to New East End Bridge Abutment (2 Tracks, Approx 1,700' per Track)
- From New Bridge Abutment to New Movable Span (2 Tracks, Approx 400' per Track)
- East End cut & throws with vertical realignment and surfacing (from 4" below bottom of tie) up to New Movable Span.
- Installation of all required Guard Rails and Miter Rails on both Tracks.

Track construction, inspection, maintenance, and repair work is clearly work of the scope and magnitude historically performed by BMWED forces on and prior to January 1, 1987, which would include work on the Connecticut River Bridge. Our seniority rosters capture classifications mirroring any classifications a contractor might use on the referenced track construction and installation work. We understand that BMWED workers are qualified and possess the skills necessary to perform all facets of this project. Justifications for using other than BMWED represented forces for the referenced work is plainly not a permissible basis to contract-out work without the concurrence of the General Chairman. Prior to 1987 there was no track construction, inspection, maintenance, or repair work performed by a contractor without concurrence of the General Chairman.

As you must be aware, the track work you referenced in your notice is core scope work, work that is clearly reserved to the BMWED by the unambiguous language contained within the Scope of the parties' NEC Agreement. Paragraph A of the Scope Rule states in pertinent part:

*"A. Effective March 2, 1987, the following work may not be contracted out without the written concurrence, except in case of emergency, of the appropriate General Chairman.*

*(1) Track inspection, maintenance, construction, or repair from four (4) inches below the base of the tie up, and undercutting."*

The Carrier, in conference and contained within the notice, made the assertions that: *"This project is ... considered a Major Construction project in accordance with BMWED Scope Rule Exceptions."* This statement is misplaced as even a cursory review of Agreement will allow the understanding that there exists no Major Construction project exception for track construction of the type being contemplated with this project.

It is fundamental that work of a class belongs to those for whose benefit the contract was made, and delegation of such work to others not covered thereby is a repudiation of the Agreement. The Organization insists that the work involved herein is clearly Scope-covered work that is reserved to BMWED represented employees. Even if the exception listed Section A.1.b. (1) for *"lack of available skilled manpower"* was applicable, which it is not, it would be absurd to contend that the Carrier lacks sufficient manpower to construct and install a minor amount of track across this bridge. BMWED represented workers can be marshalled from the surrounding area is clearly no challenge especially given the fact that the location of the bridge is centrally located and readily accessible.

Continuing, our Side Letter No. 2 enforces what work is reserved to our Organization's members, and states in relevant part:

*"It is understood that it is the Carrier's intent to preserve work of the scope and magnitude historically performed by members of the BMWED for the Carrier as of January 1, 1987, or prior thereto. It is understood that Paragraph A.1.b. of the Scope Rule of the Agreement dated January 5, 1987, will not apply to work of the scope and magnitude historically performed by members represented by the BMWED."*

The literal language of the Scope Rule and Side Letter No. 2 demonstrates the parties' intent to limit the Carrier's ability to contract out Scope-covered work. This language is critical to a proper understanding of the application of the Scope Rule. Evidentiary records will clearly demonstrate that the track repair and construction work at issue is of the scope and magnitude historically performed by BMWED forces contracted to Amtrak property.

The exceptions to the Scope Rule that then require the General Chairman's concurrence for contracting-out in circumstances when the time for completion of the work is determined prior to the start of the project cannot be met due to lack of available skilled manpower under Section 1.b of the Scope Rule is plainly inapplicable to the plan to contract-out the track construction and installation work for the Connecticut River Bridge Replacement project. The exception is inapplicable because the work involved is work of the scope and magnitude historically performed by members of our Union under Side Letter No. 2. In that connection, the Carrier cannot rely on the exceptions of the Scope Rule as a reason to contract out this work and the General Chairman's concurrence is absolutely required.

A review of the clear and unambiguous language of the Scope Rule and of Side Letter No. 2 should allow you to understand that the work referenced by the Carrier's notice cannot be subcontracted without the written concurrence of the appropriate General Chairman. In the instant matter the General Chairman's concurrence is required for contracting out to proceed.

I will be advising the General Chairman to withhold his concurrence. Should contracting out for this project continue as referenced in your January 24, 2022, notice and our subsequent conferences, the Organization would consider that contracting as a unilateral change in the terms of our agreement and that the Carrier would have effectively rejected and abrogated the BMWED NEC Agreement not in the manner prescribed in Section 156 of the Railway Labor Act. The Organization would consider contracting out in this connection as a violation of Section 2 Seventh of the Act and clearly fitting the definition of a "Major Dispute". If cornered, the Organization will exercise each and every legal recourse at our disposal to protect the integrity of the agreement.

01-LCR-21-1121  
Conn River Bridge, MP106.89

July 18, 2022  
*page 5 of 5*

You may contact our offices in the customary manner should you want to discuss how and when BMWED represented employees will be assigned the referenced track work, or should your representatives need assistance planning and scheduling the work for our employees. We are immediately available to conference and to answer any questions on how best to proceed with the subject work using BMWED represented employees.

In the good faith spirit of the Scope Rule, the Organization will take into consideration any meaningful suggestions the Carrier may have to resolve this issue amicably. Kindly notify my office with available dates should you wish to continue our discussions related to this matter. We look forward to hearing back from you.

Thank you.

Respectfully,



Renato Rufo  
VC District - 6  
B.M.W.E.D. U.P.R.F.

Cc: A. Sessa  
File