

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 36155  
Docket No. MW-34930  
02-3-98-3-667**

**The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.**

**PARTIES TO DISPUTE: (**  
**(Brotherhood of Maintenance of Way Employes**  
**(Burlington Northern Santa Fe (former Burlington**  
**( Northern Railroad Company)**

**STATEMENT OF CLAIM:**

**"Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier assigned outside forces (Mechanical Specialties Incorporated) to perform Maintenance of Way and Structures Department work (install a sanitary sewer line) in the Hobson Yard, Lincoln, Nebraska on October 5, 6, 9, 10, 11, 12, 13, 16, 17, 18 and 19, 1995 (System File C-96-C100-14/MWA 96-01-31AG BNR).**
- (2) The Agreement was further violated when the Carrier failed to make a 'good-faith,' effort to reduce the incidence of subcontracting and increase the use of its Maintenance of Way forces as required by Appendix Y.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Messrs. R. B. German, M. F. Kildare, D. G. Kolb, S. P. Humeniak, J. C. Francke and L. J. Fountain shall each be allowed eighty-eight (88) hours, pay at their straight time rates."**

**FINDINGS:**

**The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:**

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Under date of May 2, 1995, the Carrier presented the General Chairman with a notice of its intention to utilize an outside contractor to perform new construction work in Hobson Yard, Lincoln, Nebraska. Following a conference pursuant to the Note to Rule 55, the Parties agreed in a June 1, 1995 conference that BMW-represented Carrier forces would be assigned to perform the work of laying the trackage, installing turnouts and all crossing work. When no agreement was reached concerning the Carrier's expressed need to assign an outside contractor to perform "earthwork, sub-ballast, road relocation, culvert extension work and the work of relocating and encasing utilities in the area," the Carrier proceeded to subcontract those parts of the project.

In this claim, the Organization maintains that the Carrier violated the Note to Rule 55 and Appendix Y by allowing the general contractor to subcontract the work of constructing a sanitary sewer line to service the new office building. According to the Organization's unrefuted description of the disputed work, Plumbers, Laborers and Machine Operators employed by the plumbing/pipeline subcontractor (Mechanical Specialties Incorporated) installed the PVC sewer pipe, set concrete manholes and installed sleeves for track and frost protection for the pipes. The Organization maintains that this is work customarily and traditionally performed by Agreement-covered employees while the Carrier not only disputes that assertion but also argues that it cannot be compelled to "piecemeal" the sanitary sewer line from the larger construction project.

Careful examination of the specific facts in this case and authoritative precedent in Awards 14, 22, 25 and 71 of Public Law Board No. 4768 support the proposition that "the Carrier need not 'piecemeal' a contracted project where such would be impractical and/or inefficient." The fact that the Carrier in this case split the overall project between BMW-represented forces (laying the trackage, installing turnouts and all crossing work) and the general contractor (earthwork, sub-ballast, road relocation, culvert extension work and the work of relocating and encasing utilities in the area) does not bring the sanitary sewer work

claimed in this case within the exception to the "piecemeal" Rule set forth in Award 25 of Public Law Board No. 4768.

We are not persuaded on this record that the Carrier had any obligation under the authoritative precedent of Public Law Board No. 4768 to "piecemeal" the sanitary sewer line portion of that utility relocation and encasing work and assign it to BMW-employees.

**AWARD**

Claim denied.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

Dated at Chicago, Illinois, this 20th day of August 2002.