

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36158
Docket No. MW-34944
02-3-98-3-685**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(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 (Hulcher Services, Inc.) to operate machinery to install switches at Doon and Sioux Center, Iowa on July 15, 16, 17, 18 and 19, 1996 (System File T-D-1203-2/MWB 96-11-27AE 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 Rule 55 and Appendix Y.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants J. D. Zon, T. D. Gunst, M. M. Meisch, R. F. Joachim, K. J. Loftesness and J. M. Stubson shall each receive pay for forty (40) hours at their respective straight time rates of pay for the work performed by the outside forces.”**

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.

On June 27, 1996, the Carrier served written notice on the Organization, in accordance with the Note to Rule 55, of its intent to utilize a contractor (Hulcher Services Inc.) to provide two side boom Caterpillar tractors and one Caterpillar track loader, with operators, to assist in the placement of six pre-constructed switch track panels into its main tracks at Doon, Iowa, and Sioux Center, Iowa, on the Marshall Subdivision. (Aside from placement of the panels using this specialized equipment, Carrier assigned the balance of the work on that project to its own M of W forces).

The General Chairman requested a conference and the Parties met on July 10, 1996 to discuss the Carrier's notice of intent to contract the use of side boom Caterpillar tractors to place these switch panels. During the conference, the Carrier stated the switch panels would have to be completely lifted off of the ground, transported and set into their main track locations without dragging, pushing or twisting the panels to avoid damage to the panels and the Carrier did not have such equipment available. The Carrier further explained that failure to use side boom Caterpillar tractors would result in cutting the long (approximately 140 foot) switch panels into various pieces, moving them into place with smaller Carrier-owned equipment and welding them back together in the main track, resulting in a weaker and inferior switch compared to one that was placed into the track as one panel.

The Organization apparently did not contest the need for the side-boom Caterpillars but asserted that the Carrier had such equipment in its inventory, currently available at Seniority District No. 3, Fargo, North Dakota. The Carrier responded that the Organization was mistaken and reasserted the unavailability of the specialized equipment needed for this project, which was scheduled to be performed between July 15 and August 23, 1996. In support of its contention that the Carrier was failing to utilize available Carrier-owned special equipment, the Organization presented an undated photograph of a Caterpillar tractor on a flat car and a copy of a "Complete

Roadway Equipment Inventory," dated February 27, 1990. Careful examination of the record evidence shows only that the equipment may have been at Fargo six years prior to the date of this claim but fall far short of establishing that the Carrier owned available specialized equipment required for the disputed work in July-August 1996. In the facts and circumstances of this case, the Carrier made out a persuasive showing that it was permissible to subcontract the work under the provision of the Note to Rule 55 regarding "special equipment not owned by the company. . . ." See Third Division Awards 30092, 31615, 32274 and 34019.

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.