

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37434
Docket No. MW-36421
05-3-00-3-664**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(BNSF Railway Company (former Burlington
(Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned outside forces (Kinley Construction) to perform Maintenance of Way work involved in constructing a new fueling station at Sioux City, Iowa on the Marshall Subdivision of the Dakota Division beginning September 16, 1998 and continuing (System File T-D-1692-B/11-99-0142 BNR).
- (2) The Carrier violated the Agreement when it assigned outside forces (Kinley Construction) to perform Maintenance of Way work involved in constructing a new fueling station at Sioux City, Iowa on the Marshall Subdivision of the Dakota Division beginning June 14, 1999 and continuing (System File T-D-1870-B/11-99-0530).
- (3) The Agreement was further violated when the Carrier failed to provide the General Chairman with a proper notice of its intent to contract out the aforesaid work or 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.

- (4) As a consequence of the violations referred to in Parts (1) and/or (3) above, Water Service Foreman E. J. DeSchepper, Water Service Mechanic C. W. Otto, Foreman B. J. Johnson, First Class Carpenters R. J. Hillestad, J. N. Grohs, Truck Drivers J. M. Eitreim, S. D. Berge, M. W. Koepp, V. G. Van Voorst, D. A. Gilberts, K. J. Buehler, Blacksmith D. G. Skillman, Group 2 Machine Operators R. A. Nikstad, L. D. Nelson, M. L. Ahnberg, W. E. Silkenson, S. A. Ahnberg and M. L. Hutchinson shall each be compensated for an equal and proportionate share of all straight time and overtime hours worked by the contractor beginning on September 16, 1998 and continuing until the violation ceases.
- (5) As a consequence of the violations referred to in Parts (2) and/or (3) above, Water Service Foreman E. J. DeSchepper, Water Service Mechanic C. W. Otto, Foreman L. M. Enze, First Class Carpenters R. J. Hillestad, J. N. Grohs, B. J. Johnson, Truck Drivers J. M. Eitreim, S. D. Berge, D. A. Gilberts, Blacksmith D. G. Skillman, Group 2 Machine Operators L. D. Nelson, M. L. Ahnberg, W. E. Silkenson, S. A. Ahnberg, M. L. Hutchinson and Group 3 Machine Operator J. P. De Schepper shall each be compensated for an equal and proportionate share of all straight time and overtime hours worked by the contractor beginning on June 14, 1999 and continuing until the violation ceases.”

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.

By letter dated May 14, 1998, the Carrier notified the Organization that it intended to contract for the construction of new wastewater and fueling facilities at Sioux City, Iowa. The Carrier listed a variety of reasons why it intended to contract for the construction, including special equipment and skills not possessed by Carrier forces, and licensing problems.

The parties met on June 9, 1998 to discuss the project. No agreement was reached and the Organization thereafter filed and progressed two separate claims. The first involves phase one of the construction project beginning on September 16, 1998. The second claim is for the construction work on phase two of the project beginning June 14, 1999.

The circumstances of this case and the arguments advanced by the parties have been addressed in a closely similar dispute. In Third Division Award 37434, the Board held that the Organization failed to establish that the work in question was customarily performed by BMW-represented forces. As in that case, we must rule to deny the claim.

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 22nd day of March, 2005.