

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40496
Docket No. MW-39633
10-3-NRAB-00003-060436
(06-3-436)**

The Third Division consisted of the regular members and in addition Referee Daniel F. Brent when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference
(BNSF Railway Company (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 (Peltz Companies, Inc.) to perform Maintenance of Way and Structures Department work (build concrete parking lot and roadway) at the Diesel Pit Tower in Alliance, Nebraska beginning on October 25, 2004 and continuing through November 6, 2004 [System File C-05-C100-26/10-05-0052(MW) BNR].**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with a proper advance notice of its intent to contract out said 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.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants R. Benton, D. Jespersen, M. McLaughlin, V. White, V. Sanchez, B. Kutschara and R. Flores, Jr., shall now each be compensated for eighty (80) hours at their respective straight time rates of pay and for sixteen (16) hours at their respective time and one-half rates of pay.”**

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.

The Organization contends that the Carrier violated the Agreement when it assigned Peltz Companies, Inc. to build a concrete parking lot and roadway at the Diesel Pit Tower in Alliance, Nebraska, beginning on October 25 and continuing through November 6, 2004.

The Carrier notified the Organization of its intent to build a parking lot and roadway and to upgrade and install a sewer and diesel containment pit. The parties met and discussed the project. The Carrier engaged the services of a contractor to pave the parking lot, which aspect of the project was performed by seven contractor's employees. The disputed work is similar to work performed nearby by the Claimants in the regular course of their duties for the Carrier. Four of the Claimants asserted that they had performed similar work in the past for the Carrier.

The evidentiary record supports the Organization's contention that the Carrier has in its inventory, or readily could have rented, the equipment necessary to perform the disputed work. The record also demonstrated persuasively that the Claimants possessed the necessary skills and experience to complete the disputed paving work in a competent and expeditious manner. The Carrier's argument that the paving work at issue was inextricably intertwined with the storm sewer construction project was unable to overcome the more compelling evidence offered by the Organization, including photographs of the project, that mandate a conclusion that the paving was readily severable from the sewer construction

project without unduly delaying or complicating the sewer construction project. Moreover, the Carrier did not distinguish in its contracting out discussion with the Organization at the property level between the disputed work and the nearby similar project successfully performed by bargaining unit employees or demonstrate sufficiently to this Board why the paving element was not a discrete component of the job that Carrier forces should have been assigned to perform.

Therefore, based on the evidence submitted, the instant claim is hereby sustained. Claimants R. Benton, D. Jespersen, M. McLaughlin, V. White, V. Sanchez, B. Kutschara and R. Flores, Jr., shall now each be compensated for 80 hours at their respective straight time rates of pay and for 16 hours at their respective time and one-half rates of pay.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 15th day of June 2010.