

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40662
Docket No. MW-40095
10-3-NRAB-00003-070272
(07-3-272)**

The Third Division consisted of the regular members and in addition Referee Michael D. Gordon when award was rendered.

**(Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(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 (Hulcher and Heartland Crane Rental) to perform Maintenance of Way and Structures Department work (tear down signal bridge and related work) at Mile Post 35.1 near Ashland, Nebraska on February 4, 2004 [System File C-04-C100-61/10-04-0182(MW) BNR].**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman advance written notice of its plans to contract out the above-described work as stipulated in the Note to Rule 55 and Appendix Y.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants J. Phillippi, K. Rempel, R. Reimers, G. Tjaden, D. Gerken, T. Lyons and J. Francke shall now each be compensated for eight (8) hours' pay at their respective straight time 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.

On either February 1 or 3, 2004, a derailment near Ashland, Nebraska, disabled the signal bridge over the track. Without notice to the Organization, the Carrier contracted with Hulcher and Heartland Crane Rental ("Hulcher") to dismantle and remove the damaged signal bridge. Hulcher, in part, used a crane, crawler hoe and dozer to dig out and help remove footings, using seven of its employees eight hours each.

The Organization grieved tearing down the signal bridge, alleging a violation of Rules 1, 2, 5, 55 and Appendix Y. It argued (1) the Note to Rule 55 reserves to BMW-represented employees the work of "dismantling . . . structures" (2) removing signal bridges traditionally, historically and customarily is work reserved for and performed by B&B and Roadway Equipment Sub-department forces (3) the Carrier failed to provide a mandatory Appendix Y notice (4) all Carrier defenses lack merit (5) the Carrier has, or can obtain, the necessary equipment and the Carrier's employees have the skills to perform the work (6) there was no emergency or other exception permitted by the Note to Rule 55 and (7) arbitration decisions favor the Organization.

The Carrier contends (1) the Organization did not prove its claims (2) the disputed work is not "bridge repair" because it was not a track bridge (3) a signal bridge is a signal apparatus outside the Organization's work scope (4) unlike the

Brotherhood of Railroad Signalmen (BRS) contract, the Agreement does not mention signal work for Organization employees or otherwise reserve it for BMW-represented forces (5) BMW-represented employees have not exclusively, historically or customarily built, maintained or removed signal bridges (or track bridges) (6) the Carrier is not required to piecemeal repair work (7) an emergency required cleanup of the derailment site (8) no notice was required because the disputed work is not contractually reserved to the Organization by Rule 1 or any other Agreement provision (9) the work's emergency nature also excuses lack of notice (10) this dispute may adversely affect BRS rights and it should be notified pursuant to NRAB Uniform Rules of Procedure (11) there is no evidence the Claimants were damaged and all were fully employed on the dates of the claim and (12) arbitration decisions support the Carrier.

This dispute involves a signal bridge, not a track bridge. Rule 1 in the BRS Agreement states:

“H. Carpenter, painting, welding, cutting, foundation support, concrete and form work of all classes in connection with installing repairing or maintaining any signal apparatus or device.”

Rule 1 and other Rules cited by the Organization, do not mention signal apparatus work. Reference to work “in connection with dismantling . . . structures” incorporated by the Note to Rule 55 is unspecific and does not trump the tasks expressly mentioned in the BRS Agreement. To the extent BMW-represented employees previously may have done some comparable work, they have not customarily performed it. At most, there has been a mixed practice that permits the use of contractors.

In short, the disputed work is not reserved for BMW forces under the Agreement's scope clause. Therefore, the Carrier was not required to notify the Organization or assign BMW-represented employees the disputed work.

Accordingly, the claim is denied.

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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 1st day of November 2010.