

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42199
Docket No. MW-42036
15-3-NRAB-00003-120412**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (
(Union Pacific 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 (KRW Construction) to perform Maintenance of Way and Structures Department work (dirt and grade work, lifting and moving equipment and material and associated pipe installation work) with a system Jack and Bore gang installing pipe at Mile Post 15.3 on the Omaha Subdivision beginning on March 21, 2011 and continuing (System File B-1152U-103/1555714).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper advance notice of its intent to contract out the aforesaid work and when it failed to make a good-faith effort to reduce the incidence of contracting out scope covered work and increase the use of its Maintenance of Way forces as required by Rule 52 and the December 11, 1981 National Letter of Understanding.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant A. Scavo shall now be compensated for one hundred sixty (160) hours at his respective straight time rate 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 January 31, 2011, the Carrier gave notice to the Organization of its intent to contract out "Provide equipment support, including but not limited to, backhoes, excavators, trucks, on an as-needed basis for Maintenance of Way forces in the performance of their duties," at various locations throughout the Council Bluffs Service Area.

On May 16, 2011, the Organization filed this claim:

"We hereby submit to you a claim on behalf of Group 20 Roadway Equipment Operator A. N. Scavo . . . (hereinafter referred to as Claimant) because the Carrier violated the Agreement . . . , when beginning on March 21, 2011, and continuing, the Carrier failed to assign the duties of operating recognized BMWED roadway equipment along with the associated duties to Claimant." (emphasis added)

The Parties proceeded through the claims handling process on this basis until March 12, 2012, when the Organization, in its post-conference letter to the Carrier stated: "This is common work associated with pipe jack and boring." From that point on, the Organization included "pipe installation work" as part of the claim.

The original claim from the Organization referenced only "operating recognized roadway equipment," with no mention of pipe installation. The Organization may not expand or amend its claim well into the claims handling process. Such an action is fundamentally contrary to, and indeed defeats, the entire

purpose of the process, which is designed to give the Carrier notice of a dispute and an opportunity to investigate and respond. It cannot have a fair opportunity to do that if the Organization is permitted to amend its claim at the end of the claims handling process to include allegations not previously raised and totally unrelated to the original claim. In such cases, the Board has uniformly dismissed the claims, and the Board will follow those precedents.

AWARD

Claim dismissed.

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 28th day of October 2015.