Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
THIRD DIVISION

Award No. 42226
Docket No. MW-42020
15-3-NRAB-00003-120380

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

PARTIES TO DISPUTE: **(Brotherhood of Maintenance of Way Employes Division - IBT Rail Conference**
(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 (Haz Mat, Inc.) to perform Maintenance of Way and Structures Department work (cleaning right of way/remove coal dust from track structure) between Mile Posts 109 and 115 on the South Morrill Subdivision on May 3 and 4, 2011 (System File D-1152U-223/1556979).

(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 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, Claimants B. Bondegard, J. Carabajal, D. Martinez, G. Tophoj, V. Lumpkin and B. Parker shall now each be compensated for sixteen (16) hours 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.

This claim was filed after the Carrier used a contractor to remove coal dust from the track structure between Mileposts 109 and 115 on the South Morrill Subdivision on May 3 and 4, 2011. The Organization contends that it did not receive adequate notice of the proposed contracting transaction; that the work is reserved to BMWE-represented forces by Rules 9 and 10 of the Parties' Agreement; and that the Carrier failed to establish that the contracting was proper under Rule 52. Conversely, the Carrier contends that the notice was adequate under Rule 52 and that the work was properly subcontracted.

On January 24, 2011, the Carrier sent a "15 Day Notice of Intent to Contract Work" to the Organization. It stated:

"This is to advise of the Carrier's intent to contract the following work:

PLACE: At various locations on the North Platte Service Unit.

SPECIFIC WORK: Providing fully fueled, operated and maintained Vac truck(s) for cleanup of spills, debris and or other materials commencing February 7, 2011 thru December 21, 2011.

THIS WORK IS BEING PERFORMED UNDER THAT PROVISION OF THE AGREEMENT WHICH STATES 'NOTHING CONTAINED IN THIS RULE SHALL AFFECT PRIOR AND EXISTING RIGHTS

AND PRACTICES OF EITHER PARTY IN CONNECTION WITH CONTRACTING OUT.'"

The Organization responded and on February 1, 2011, the Parties held a conference regarding the notice. During the conference, the Carrier referenced the fact that Vacuum trucks are needed to adequately clean tracks of debris but UP does not own enough for its needs; the Carrier reiterated that it had a past practice of contracting out this work, which brought it under Rule 52(b) of the Agreement. By letter dated March 3, 2011, the Organization continued to protest the proposed contracting.

This is another in a long line of adequate notice and contracting out cases submitted to the Board for decision; the facts of this dispute have much in common with other cases where the Carrier is, in essence, providing annual notice to the Organization of its intent to contract out work that it has regularly contracted out in the past. Here, the evidence is that the Carrier needs Vacuum trucks to clean tracks (and for other cleaning purposes) but owns only one Vacuum truck in its entire territory, and it is located nowhere near the site of the instant dispute.[1] This would bring contracting for Vacuum trucks squarely within the exception in Rule 52(a) for "special equipment not owned by the Company." However, in the January 24, 2011 notice, the Carrier gave as its reason for the contracting past practice under Rule 52(b). The evidence reveals that, in fact, the Carrier has contracted Vacuum trucks for a number of years.[2]

As in Third Division Award 42224, the Parties (and the Board) need to be pragmatic regarding contracting notices in cases like these. The Carrier has been contracting Vacuum trucks throughout the North Platte Service Unit on a regular basis for years, so the Organization cannot have been surprised to get the January 24,

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[1] **See, e.g., the statement of Manager of Track Phillip Egan, Jr., who wrote:**

> **"We do not own vacuum trucks. I think there is one on the UP property on the Moffat Tunnel Subdivision. The rest of the UP property does not have one. In the last 25 to 30 years we have always used contractors to perform this type of clean up because of the environmental issues and permits."**

[2] **While the Organization would prefer that the Carrier buy Vacuum trucks for BMWE-represented employees to operate, the decision to purchase, lease or contract for the Vacuum trucks is a traditional management right, and therefore is reserved to the Carrier.**

2011 notice indicating the Carrier's intention to continue doing in 2011 what it had routinely done in past years. The Carrier further explained the matter during the Parties' conference on February 1, 2011. One could quibble that the Carrier has conflated, or confused, Rule 52(a) and Rule 52(b). But the bottom line is that contracting Vacuum trucks is clearly permissible under Rule 52(a). The fact that the Carrier categorized the contracting as Rule 52(b) did not deprive the Organization of the knowledge it needed to be able to determine whether the work should be contracted or not. Thus the notice was adequate under Rule 52. The Carrier did not violate the Agreement either in the notice or in the contracting transaction itself.

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 17th day of November 2015.