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

Award No. 42459
Docket No. MW-41334
16-3-NRAB-00003-100199

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(BNSF Railway Company (former Atchison, Topeka
(and Santa Fe Railway Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned outside forces to perform Maintenance of Way work (remove/replace main track switch and related work) at Mile Post 6.7 in the vicinity of Fort Worth, Texas on November 6, 2008 [System File F-08-32C/13-09-0011(MW) ATS].

(2) The Agreement was further violated when the Carrier failed to provide the General Chairman with a proper advance written notice of its intent to contract out the aforesaid work or make a good-faith effort to reach an understanding concerning said work as required by Appendix No. 8.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants M. Lindley, J. Whatley, J. Miller, M. Odhams and R. Sanchez shall now each be compensated for eight (8) hours at their respective straight time rates of pay and for two (2) 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.

In a letter dated April 23, 2007, the Carrier sent a notice to Mr. C. M. Morgan, General Chairman of the BMWE informing the Organization that it intended to contract out work to upgrade a previously leased facility in the Mark IV Transload Facility in Fort Worth – to include additional land leased to Musket Love, Inc. In that notice, the Carrier stated that the purpose of the work was to "be in compliance with federal/state regulations governing the handling of ethanol distillates." The notice then described the work to be performed.

On May 2, 2007 the Organization and the Carrier met to discuss the details of the Musket Love contracting transaction. Despite the good-faith efforts of the parties, however, the Organization and Carrier were unable to come to agreement on the work at issue. The Carrier then proceeded with the work using a contractor as indicated in the April 23, 2007 letter. On December 17, 2008 the Organization filed the instant claim on behalf of the Claimants listed above. In that claim, the Organization alleged that the Carrier had violated the Agreement when, commencing November 6, 2008, it contracted out BMWE work.

The Carrier denied the claim by letter of February 17, 2009. The Organization appealed the denial on April 23, 2009. The claim was subsequently progressed in accordance with the Parties' Agreement, after which it remained in dispute. It is, therefore, properly before the Board for resolution.

At the outset, the Organization protests that the Carrier has violated Rule 1 – Scope and Rule 2(a) – Establishment of Seniority, as well as Appendix 8 and the December 11, 1981 Letter of Agreement (Berge-Hopkins Letter) in contracting out the work at issue. It protests that Carrier's letter informing the Organization of its intent to contract out various work pre-dates the actual work performed by some 18 months and cannot be considered "timely" notice of its intent to contract out the specific work at issue here. Finally, the Organization contends that the Claimants were qualified

and available to perform this work and that the work involved is traditionally and by practice reserved to Maintenance of Way employees.

The Carrier disputes the Organization's claim that the notice of intent to contract out the work at issue was not timely. Specifically, it points to the April 23, 2007 notice letter in which the work to be done is listed, and to the fact that the work at the Transload Facility in Fort Worth was discussed by the Parties in accordance with both Appendix 8 and the Berge-Hopkins letter. The Carrier also asserts that it does not have either the equipment or the personnel to perform the work at issue, nor is it required to piece-meal a project for which it has given proper notice and about which it has discussed thoroughly with the Organization (as per Appendix 8 and the Berge-Hopkins Letter).

The Board has reviewed all the documentation presented in this case and carefully considered the position of both parties. While there was arguably a relatively long period between the notice of intent to contract out the work at issue and the particular work that is at issue in this case, we do not find that the Carrier's notice was defective, or that the Organization can legitimately claim it was unaware of the work to be done. In light of the foregoing we see no basis upon which to sustain the instant 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 31st day of October 2016.