

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42517  
Docket No. MW-41339  
17-3-NRAB-00003-100213**

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

**(Brotherhood of Maintenance of Way Employees 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 (renew crossings and related work) at Mile Posts 364.0 and 366.0 in the vicinity of Haslet, Texas commencing on January 7, 2009 and continuing through January 14, 2009 [System File F-09-07C/13-09-0020(MW) ATS].**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with an advance written notice of its intent to contract out the aforesaid work as required by Appendix No. 8.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants J. Thweatt, G. Cody, K. Beachum, J. Vaughn, J. Flannigan, E. Young, J. Tolbert, C. Dawson, J. Silk and C. Coleman shall ‘. . . now be compensated an equal and proportionate share of any and all straight time and overtime hours, at their respective rates of pay for the specific claimed work performed by contractor’s employees commencing on January 7, 2009 and continuing through January 14, 2009.’”**

**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 April 7, 2008, the Carrier sent a contracting notice to General Chairman Hemphill informing him of the Carrier's intent to contract various projects, including a considerable project at the Alliance Intermodal Facility (IMF). The Carrier and General Chairman met in a contracting conference, in accordance with Appendix 8 and the Berge-Hopkins letter but, despite good-faith efforts by both parties were unable to reach an agreement.

The Organization filed the instant claim on behalf of the Claimants on March 2, 2009. In that claim it alleged that the Carrier had violated the Agreement when it contracted out work in the vicinity of Haslet, Texas beginning on January 7, 2009 and continuing through January 14, 2009. The Carrier denied that claim on April 30, 2009. That denial was appealed by the Organization on May 12, 2009, and was again denied by the Carrier on July 3, 2009. The matter was progressed by the parties in accordance with their agreement up to and including conference on the property, after which it remained unresolved. It is, therefore, properly before the Board for adjudication.

This case is similar in circumstance and location to those in Third Division Award 42518. In that Award, as here, the Board found that the Organization had not met its burden of proof regarding the work involved or the alleged failure of the Carrier to give due notice thereof.

For reasons set out at length in that Award the instant claim is denied in its entirety.

**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 11th day of January 2017.**