

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42923
Docket No. MW-43137
18-3-NRAB-00003-150399**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

PARTIES TO DISPUTE: (
(Norfolk Southern Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned outside forces (L.B. Foster) to perform Maintenance of Way and Structures Department work (relocate lubricators and related work) on the Leechburg Subdivision on March 26, 27 and April 2, 2014 instead of assigning employee J. DeCock thereto (Carrier’s File MW-Pitt-14-42-LM-249 NWR).**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with advance notice of its intent to contract out said work as required by Appendix ‘F’.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant J. DeCock shall be compensated for all lost work opportunity.”**

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.

The Organization filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the Agreement when it contracted out certain Maintenance of Way work instead of assigning such work to the Claimant. The claim further alleges that the Carrier committed another violation of the Agreement by failing to provide advance notice to the General Chairman of its intent to contract out the work in question. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the work at issue historically, customarily, and traditionally has been performed by Maintenance of Way forces; because the work at issue is contractually reserved to Maintenance of Way forces; because the Carrier failed to comply with the Agreement mandate that it provide the General Chairman with advance notice of its intent to contract out the work at issue; because there is no merit to the Carrier's defenses; because the Carrier failed to honor its commitment set forth in the December 1981 Letter of Agreement to maximally shrink even formerly allowed subcontracting; and because the Claimant is entitled to the requested remedy. The Carrier contends that the instant claim should be denied in its entirety because the rules cited by the Organization do not support its claim, because the Organization has failed to prove that the contractor performed the work at issue, because the Organization has failed to prove that any work actually performed by the contractor was within the scope of the Agreement, and because the Organization has failed to prove a right to the claimed work and remedy.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the parties' Agreement when it had outside contractors working on the rail lubricators.

The facts are clear that on the dates at issue, the contractor in question installed new solar panels and rewired the solar lubricators, but those lubricators had been relocated by the Organization-represented employees. The actual installation of new panels and rewiring was properly done by the contractor because contractors have historically performed that work and the Carrier does not have the skilled workforce or the material and equipment to perform that work. In other words, the Organization employees performed the work that they are complaining the Carrier had the outside forces perform. That simply was not the case. The contracting out was done properly as was the relocation of the lubricators and related work that was properly performed by the Organization-represented employees.

Since the Organization has failed to meet its burden of proof in this case, the Board has no choice but to deny the claim. This claim must be denied.

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 14th day of February 2018.