

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43260
Docket No. MW-42580
18-3-NRAB-00003-140242**

The Third Division consisted of the regular members and in addition Referee Randall M. Kelly when the award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –
IBT Rail Conference
PARTIES TO DISPUTE: (
(BNSF Railway Company (Former Burlington
(Northern 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 (Earthworks Construction) to perform Maintenance of Way and Structures work (haul ballast) to East Campbell on October 24, 2012 (System File C-13-C100-125/10-13-0162 BNR).**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with an advance notice of its intent to contract out said work or make a good-faith effort to reduce the incidence of subcontracting and increase the use of its Maintenance of Way forces as required by Rule 55 and Appendix Y.**
- (3) As a consequence of the violation referred to in Parts (1) and/or (2) above, Claimant C. Bartow shall now be compensated for eight (8) 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.

The Claimant C. Bartow established seniority as a Truck Driver in the Carrier's Maintenance of and Structures Department. On the date in question, he was assigned to his respective position and retained the requisite seniority with the Carrier's Track Sub-department.

According to the Organization, on October 24, 2012, the Carrier assigned outside contractor Earthworks Construction to perform the work of hauling and dumping ballast. The Organization provided a statement from what appears to be the Claimant, Chris Bartow (the signature is difficult to read and there is no typed or printed name) as follows:

"On Wednesday October 24th I witnessed one Earthworks dump truck dumping ballast rock at East Campbell on the railroad right of way. Four loads, 1 truck, 1 man, 8 hours."

The Carrier consistently stated that the work was never contracted or done. The Organization presented impressive arguments that this was a case where the Carrier violated the Note to Rule 55. However, the evidence presented by way of the Claimant's (?) statement is insufficient for the Board to find that the work was actually performed and, if so, under what circumstances. The Organization has failed in its initial burden and the claim is denied.

AWARD

Claim denied

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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 26th day of June 2018.