

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43261  
Docket No. MW-42581  
18-3-NRAB-00003-140243**

**The Third Division consisted of the regular members and in addition Referee Randall M. Kelly when 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 (Buel/Pavers) to perform Maintenance of Way and Structures work (deliver ballast for bridge track panels) on the Beatrice Subdivision Segment 152 on November 30, 2012 (System File C-13-C100-140/10-13-0183 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, Claimants T. Behrens, L. Snyder, D. Klecan, K. Kildow, B. Wheeler, R. Brennan and E. Delano shall now be compensated for eight (8) hours at their respective straight time rates of pay and for six (6) 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.**

**The Claimants Brandon Snyder, Eric F. Delano, Tim G. Behrens, Kris L. Kildow, Bill R. Wheeler, Leroy J. Snyder, Donald P. Klecan and Raymond M. Brennan have established and hold seniority within various classifications of the Carrier's Maintenance of Way Department (Behrens as a foreman and the others as stuck drivers). On the date in question, they were regularly assigned to their respective positions and retained the requisite seniority with the Carrier's Track Sub-department.**

**According to the Organization, on November 30, 2012, the Carrier assigned outside contractor Buels/Pavers to perform the work of delivering ballast for bridge track panels. "The work of hauling materials in connection with Maintenance of Way track and Bridge and Building (B&B) construction is quintessential railroad work. Moreover, such work has customarily, historically and traditionally been performed by Maintenance of Way forces such as the Claimants and is contractually reserved to them in Accordance with Rules 1, 2, 5, 55 and Note to Rule 55." See, Awards 40495, 40565 and 40567.**

**The Carrier does not deny that the subcontracting occurred but asserts that the Claimants failed to provide adequate evidence of the violation. The Organization submitted a statement on March 12, 2013 from Local Chairman Monte Sailors as follows:**

**"I was witness to this violation and the dates, hours and information in the claim are true. The work is done by MOW employees and we should have been given the opportunity to do the work. The notice to contract attached to the declination of this claim was for the Lincoln Yard Improvement project. This violation was committed in Beatrice**

about 60 miles south of Lincoln and had nothing to do with the Yard project. I was running 6700 at location when violation happened.”

This is not the best proof of the facts asserted in the claim, but it is sufficient. The Organization has met its initial burden. From there, the Organization’s principal contractual claim is that the Carrier failed to provide required notice to the General Chairman as required by the Note to Rule 55.

1. The Carrier may contract out work customarily performed by Carrier forces only under certain specifically enumerated circumstances.
2. When the Carrier desires to contract out such work, it is obligated to notify the General Chairman not less than fifteen (15) days prior to the contracting transaction and if the General Chairman desires, the Carrier must meet with him to discuss matters relating to the contracting transaction. The parties shall make a good-faith attempt to reach an understanding concerning the matter. If the parties do not reach an agreement, the Carrier may contract the work and the Organization may progress claims in connection therewith. The burden of proving justification for the planned contracting rests squarely with the Carrier.

The Carrier’s failure to comply with the notice provisions of the Agreement requires sustaining the claim. As remedy for this failure and in the absence of evidence to the contrary, Claimants T. Behrens, L. Snyder, D. Klecan, K. Kildow, B. Wheeler, R. Brennan and E. Delano shall now be compensated for eight (8) hours at their respective straight time rates of pay and for six (6) hours at their respective time and one-half rates of pay.

### **AWARD**

Claim sustained in accordance with the Findings.

**Form 1**  
**Page 4**

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**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

**Dated at Chicago, Illinois, this 26th day of June 2018.**