

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43262
Docket No. MW-42583
18-3-NRAB-00003-140256**

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 Employes 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 (Loram) to perform Maintenance of Way and Structures work (clean fouled ballast between main line tracks) at various locations between Mile Posts 70.0 and 77.0 on the Orin Subdivision of the Powder River Division in Wyoming on October 24, 29, 30, 31 and November 1 and 2, 2012 (System File C-13-C100-147/10-13-0196 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 D. Tipton, S. Amador and R. Noggle shall now be compensated for forty (40) straight time hours at their respective 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 Donald Tipton, Sam Amador and Robert Noggle have established seniority in various classifications within the Carrier's Track Sub-Department and Roadway Equipment Sub-Department of the Maintenance of and Structures Department. During the time period involved herein, they were regularly assigned to said positions.

According to the Organization, on October 24, 29, 30 and 31, 2012, the Carrier assigned outside contractor Loram to clean fouled ballast using a Loram Ditcher at between Main Tracks 3 and 4 from Mile Posts 70.0 to 77.0. The contractor also piled fouled ballast outside of the main tracks using a conveyor belt on the Orin Subdivision of Orin Subdivision of the Powder River Division, utilizing one foreman and two machine operators for a total of six days, for a total of forty hours each.

According to the Organization, the work of cleaning fouled ballast between mainline tracks 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 the Note to Rule 55.

Among the Carrier's defenses is a contention that the equipment used by the contractor, the Loram Ditcher is proprietary equipment of Loram and that Loram will not rent the equipment without one of its own operators. The Organization was

not able to present persuasive evidence that this was not the case. The Note to Rule 55 provides:

“However, such work may only be contracted provided that special skills not possessed by the Company's employees, special equipment not owned by the Company, or special material available only when applied or installed through supplier, are required; or when the work is such that the Company is not adequately equipped to handle the work, or when emergency time requirements exist which present undertakings not contemplated by the Agreement and beyond the capacity of the Company's forces.”

Accordingly, the Carrier has established one of the exceptions to the Note to Rule 55 so that all other issues are moot. Accordingly, the claim must be denied for that reason alone.

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 26th day of June 2018.