

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43576  
Docket No. MW-42353  
19-3-NRAB-00003-180463  
NRAB-0003-130359**

**The Third Division consisted of the regular members and in addition Referee Jacalyn J. Zimmerman when award was rendered.**

**(Brotherhood of Maintenance of Way Employes Division -  
(IBT Rail Conference**

**PARTIES TO DISPUTE: (**

**(Union Pacific Railroad Company (former Chicago  
and North Western Transportation Company)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Carrier violated the Agreement when it assigned outside forces (Hulcher Services, Inc., Rybak and STS LLC) to perform Maintenance of Way Track Department work (repairing a washout) near Mile Post 51.8 on the Mankato Subdivision on Seniority District T-7 beginning on May 6, 2012 through and including May 14, 2012 (System File B-1201C-116/1572527 CNW).**
- (2) As a consequence of the violation referred to in Part ( 1) above, Claimants E. Nelson, J. Grunewald, A. Haupt, S. Pettis, B. Bass, T. Fogarty, D. Witt, T. Flatua, A. P. Hartman, B. Daniels, J. Popp, D. Clough, R. Melhiem, E. Portner and E. Esser shall each be compensated at their respective straight time, overtime and double time rates for an equal and proportionate share of all man-hours worked by the outside forces performing the above-described work beginning on May 6, 2012 through and including May 14, 2012."**

**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 instant claim arises from the Carrier's decision to utilize contract forces, from May 6, 2012 through May 14, 2012, to repair a washout at Mile Post 51.8 on the Mankato Subdivision. The Organization asserts that Claimants hold seniority and are experienced in performing this type of work and were available to perform it had the Carrier assigned it to them.

The Organization states that the Carrier violated the Agreement because it assigned the outside forces to perform this basic Maintenance of Way and Structures Department work and compounded its violation when it did not provide the Organization advance notice of its intent to contract out the subject work.

The Carrier points out, however, that the Agreement recognizes the Carrier's right to use contract forces in an emergency, such the one it maintains occurred here. The Carrier explains that contractors were used due to a catastrophic washout failure of the embankment and supporting track structure, which created a major service interruption lasting more than six days. The Carrier explained that because the track integrity had been compromised by the washout, it created an emergency situation that necessitated the use of contract forces.

The Board has carefully reviewed the on-property record, which includes a statement from Manager Watson, photographs, and work orders showing that the Carrier was faced with a devastating washout that directly affected the movement of traffic and impeded the Carrier's ability to provide service to its customers. In addition,

**some Carrier employees worked overtime and double overtime to help resolve the situation.**

**We conclude that the instant situation fell within the emergency exception and allowed the Carrier to utilize outside forces without violating the Agreement. Therefore, the claim is 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 27th day of March 2019.**