

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43579  
Docket No. MW-42368  
19-3-NRAB-00003-180466  
NRAB-00003-130379**

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

**(Brotherhood of Maintenance of Way Employees 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 Agreement was violated when the Carrier utilized outside forces (Railroad Specialties, Inc.) to perform Maintenance of Way and Structures Department work (remove brush and make grade for turnout switches) between Mile Posts 110.75 and 111.75 on the Altoona Subdivision on June 11 and 12, 2012 (System File B-1201C-120/1574096 CNW).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with an advance notice of its intent to contract out the above-referenced work or make a good-faith attempt to reach an understanding concerning such contracting as required by Rule 1 and Appendix '15.'**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants P. Wilson, D. Zawistowski, M. Kuberra, D. Clark, M. Rand and J. Hulke shall now each be compensated at their respective and applicable rates of pay for an equal share of the one hundred twenty (120) man-hours expended by the outside forces in the performance of the aforesaid work on June 11 and 12, 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 Organization contends that on or about June 11 and 12, 2012, at Milepost 11.75 on the Altoona Subdivision, certain of the named Claimants observed that the Carrier utilized a contractor, Railroad Specialties, Inc. to remove brush and perform dirt work to make grade for turnout switches leading to industry tracks. The contractor's crew consisted of three machine operators and three dump truck operators.

The Organization states that the location at issue is Carrier property, that the Carrier gave the Organization no notice of its intent to contract out this work, and that the Claimants are familiar with the operating equipment necessary to perform the work and could have done so had it been assigned to them. Therefore, the Organization argues, they lost the opportunity for the work and resulting compensation.

The Organization provided statements from Claimant Rand, who alleged that he witnessed the work at issue, and Claimant Kuberro, who provided a photograph of a Railroad Specialties trailer at Augusta, Wisconsin. However, the Carrier provided the Organization a statement from an official of Railroad Specialties, who denied that the company had performed the work cited in the claim.

The record thus presents us with an irreconcilable dispute as to the facts. As stated in Third Division Award 33416, see also Third Division Award 37204, the Board functions as an appellate body and does not take testimony, evaluate witness testimony

**or resolve factual disputes such as the one before us. Therefore, the Organization has failed to meet its burden of proof and we must dismiss the claim.**

**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.**