

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43583  
Docket No. MW-42415  
19-3-NRAB-00003-180470  
NRAB-00003-140013**

**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 assigned outside forces (Hulcher, Inc.) to perform Maintenance of Way and Structures Department work (operate vacuum truck to clean up right of way) in the North Yard and the West Yard at Mason City, Iowa on July 17, 2012 (System File B-1201C-125/1575251 CNW).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper advance written 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 J. Clausen and T. Woodfill shall now “\*\*\* each be compensated for an equal share of thirty (30) man/hours, that the contractor’s forces spent performing their Agreement covered work, at the applicable 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 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.

On January 17, 2011, the Carrier sent the Organization a Notice of its intent to contract out work as follows:

“Location: Various locations on the Railroad’s Twin cities Service Unit

Specific Work: Providing fully operated, fueled and maintained equipment to assist Railroad forces in performing work on an as-needed basis.”

On July 17, 2012, the Carrier utilized a contractor, Hulcher, Inc., to operate a Vacuum Truck in the Carrier's Mason City, Iowa West and North Yards. The contractor used a foreman and a machine operator, each of whom worked 15 hours to complete the work. The Organization maintained that this work is exclusively reserved to its members and the Carrier failed to comply with the contracting out provisions of the parties' Agreement. Moreover, the Organization contends that the Carrier maintains in its inventory the type of equipment utilized by the contractor to perform this work, and Claimants were available and qualified to perform the work had it been assigned to them.

The Board is persuaded that the work involved is traditionally performed by the Organization's members. The Organization contends that it has met its burden of proof in this matter because the Carrier has not satisfied the notice requirements set forth in Appendix 15 to the parties' Agreement.

We agree. The specific language of the Notice at issue, which states that it covered "various locations on the Railroad's Twin cities Service Unit," and intended to have the contract provide "fully operated, fueled and maintained equipment to assist Railroad forces in performing work on an as-needed basis" has been rejected in numerous Third Division awards, including Nos. 42542, 42548, 42551, 42552, 42554, and 42556.

As in those Awards, the instant Notice does not even identify the work to be done, and, as the Board noted in the cited Awards, it provided no time frame during which the work would be performed. If accepted by the Board, it would be tantamount to allowing the Carrier to contract out all of the Organization members' work at any time in the future. It is virtually no notice at all. We agree with the reasoning in those Awards that this cannot be what the parties intended in the subcontracting provisions of their Agreement.

We therefore conclude that the Organization has met its burden of proof. As we find the cited Awards controlling, we sustain the claim.

**AWARD**

**Claim sustained.**

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

**Award No. 43583**  
**Docket No. MW-42415**  
**19-3-NRAB-00003-180470**  
**NRAB-00003-140013**

**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 27th day of March 2019.**