

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43588
Docket No. MW-42458
19-3-NRAB-00003-180475
NRAB-00003-140061**

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 sand from tracks) at various locations within the West and North Yards in Mason City, Iowa beginning on September 4, 2012 through September 7, 2012 (System File B-1201C-128/1578262 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 J. Kockler shall now ‘*** each be compensated for an equal share of all 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.

Based upon the undisputed facts in this record, the Board is persuaded by the Carrier's procedural argument that the claim was filed under the wrong Agreement. The work involved in this claim was Consolidated System Gang work, and should have been filed under the July 1, 2001 Union Pacific Agreement. Instead, the Organization filed the claim under the former Chicago & Northwestern Agreement dated November 1, 2001. See Third Division Awards 40809, 42570.

Therefore, the claim is procedurally defective and must be 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.