

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43702  
Docket No. MW-42589  
19-3-NRAB-00003-140276**

**The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when award was rendered.**

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

**PARTIES TO DISPUTE: (  
(BNSF Railway Company**

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when the Carrier assigned outside forces (R. J. Corman) to perform Maintenance of Way and Structures work (haul track panels) from the Carrier’s Casper, Wyoming yard to various locations on the Casper Subdivision, Powder River Division on September 29, 2012 (System File C-13-C100-112/10-13-0147 BNR).**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with 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 violations referred to in Parts (1) and/or (2) above, Claimants D. Hoover, C. McCoy and E. Jones shall each now each be compensated for eight (8) hours at their respective straight time 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.

According to the Organization, on September 12, 2012, the Carrier improperly used a contractor to perform bargaining unit work—hauling track panels from the Casper, Wyoming, Yard to various locations on the Casper Subdivision. In addition, the Carrier violated the Agreement when it failed to provide advance notice of its intent to contract out the work or to make a good-faith effort to reduce the incidence of sub-contracting. However, the record includes a statement from the contractor, R. J. Corman, that it did not perform the disputed work at the claimed locations on the claimed date: in response to a query from the Carrier about invoices and/or time sheets for September 12, 2012, the contractor responded: “I do not have record of RJ Corman performing these services on this date.”

The only written evidence from the Organization is a statement dated almost a year later, which has limited usefulness. The Board concludes that there is an irreconcilable dispute over the fundamental underlying fact of whether the incident occurred as claimed or not. As numerous prior Boards have held, in such cases the Claim must be dismissed.

**AWARD**

Claim dismissed.

**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 18th day of June 2019.