

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43705
Docket No. MW-42592
19-3-NRAB-00003-140280**

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

**(Brotherhood of Maintenance of Way Employes 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 (Georgetown Rail Equipment) to perform Maintenance of Way and Structures Department work (load and haul rail) between Mile Posts 390 and 400 at Diamond Bluffs, Wisconsin on the St. Croix Subdivision, Chicago Division beginning on January 7 through 10, 2013 and continuing (System File C-13-C100-202/10-13-0282 BNR).**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with proper 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 M. Reget, J. Byrnes and L. Flottmeier shall each now ‘... be paid all hours, straight time and over time at their appropriate rate of pay as settlement of this claim. This is a continuing claim.’”**

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 filed this claim after the Carrier contracted with Georgetown Rail Equipment for a Brandt truck with operators to pull a slot train between Mile Posts 390 and 400 at Diamond Bluffs, Wisconsin, on the St. Croix Subdivision from January 7 through 10, 2013. Carrier's MOW forces assisted during the operation. According to the Organization, the work performed by Georgetown Rail's employees was traditional machine operator work routinely performed by track maintenance employees.

The Note to Rule 55 establishes the parties' rights and obligations regarding contracting out of bargaining unit work. If the disputed work is work "customarily performed" by bargaining unit employees, the Carrier may only contract out the work under certain exceptional circumstances:

"[S]uch work may only be contracted provided that special skills not possessed by the Company's employees, special equipment not owned by the Company, or special material available only when applied or installed through supplier, are required; or when work is such that the Company is not adequately equipped to handle the work, or when emergency time requirements exist which present undertakings not contemplated by the Agreement and beyond the capacity of the Company's forces."

In addition, if the Carrier plans to contract out work on one of these bases, the Note requires the Carrier to notify the Organization "as far in advance of the date on the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereto, except in 'emergency time requirements' cases." The Organization

may request a conference to discuss possibilities for avoiding the proposed contracting out, pursuant to the Note and Appendix Y.

In this case, the parties do not dispute that the work at issue is work “customarily performed” by Carrier forces, and Rule 55 applies. The Carrier provided notice by letter dated December 17, 2012, indicating its intent “to continue its ongoing program using an outside contractor’s specially equipped cars and machines that pick up scrap steel, perform ditching or cleaning work, place rip-rap, pick up ties and potentially transport short strings of rail at various locations across the system in 2013.” The Notice continued:

“The equipment used to perform this work is not owned by the Carrier, nor is it available to the Carrier for operation by Carrier forces. It consists of several rail cars that are permanently attached with articulated couplers along with a machine equipped with interchangeable grapple and bucket attachments that operates over the length of the cars while picking up or removing materials from inside the cars. BNSF employees will perform incidental work, such as flagging, consistent with the type of work being done with the contract operations.”

In short, the Carrier is alleging that the work in dispute was covered by the “specialized equipment” exception to Rule 55.

The burden is on the Carrier to establish the existence of any of the exceptions to Rule 55. The Slot Machine, or Slot Train, is a series of open-ended hopper cars that facilitate removing scrap from the right-of-way, thereby reducing the amount of time a section of track needs to be closed for scrap pickup, which is particularly important on high-traffic main lines. The Carrier does not own a Slot Machine. Georgetown Rail will not lease its equipment for operation by Carrier forces; it will only lease the Machine with its own operators.

The Board has already considered and decided this exact issue, i.e., whether the Slot Machine falls under the exceptions to Rule 55 as a specialized piece of equipment, in Award No. 39915 (09-3-NRAB-00003-040547 (Referee Clauss, 2009)). In that award, the Board found that the Slot Machine was specialized equipment and that the Carrier did not violate the Agreement when it contracted with Georgetown Rail Equipment Company for use of its equipment with operators. The Organization has not shown any

reason, such as a change in circumstances, for the instant Board to deviate from established precedent. Accordingly, 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 18th day of June 2019.