

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 43706
Docket No. MW-42594
19-3-NRAB-00003-140288

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 Carrier violated the Agreement when it assigned outside forces (R. J. Corman) to perform Maintenance of Way and Structures Department work (clean lead switches of east yard Tracks 281, 282, 283, 284, 285 and 286) between Mile Posts 93.00 and 93.50 on the Canyon Subdivision on July 12, 13 and 16, 2012 (System File C-12-C100-434/10-12-0675 BNR).
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with an 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 P. Apodaca and B. Shannon shall now each be compensated for twenty-four (24) 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 July 12, 13 and 16, 2012, the Carrier improperly used a contractor to perform bargaining unit work—cleaning lead switches in various locations between Mile Posts 93.00 and 93.50 on the Canyon 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 dates: in response to a query from the Carrier about invoices and/or time sheets for the dates, the contractor responded: “I do not show record of us performing this work.”

The evidence from the Organization consists of photographs and a statement given to the Carrier almost a year later. The photographs are undated and without any context. As for the statement, it is impossible to tell whether it was actually written when dated (8-3-12) or at some later point in time. In any event, the Organization’s evidence is not sufficient to rebut the evidence from the contractor that it did not perform the work that was the subject of the Claim. The Board concludes that there is an irreconcilable dispute over the fundamental underlying fact of whether the events occurred as claimed or not. As numerous prior Boards have held, in such cases the Claim must be dismissed.

AWARD

Claim dismissed.

**Form 1
Page 3**

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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.