

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43772
Docket No. MW-42669
19-3-NRAB-00003-140368**

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: (

**(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 (Snelton) to perform Maintenance of Way and Structures Department work (make grade, unload and install track panels and related work) near Mile Post 115 on the Shoreline Subdivision on April 10 and 11, 2013 (System File B-1301C-101/1578421 CNW).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance notice of its intent to contract out the above-referenced work and when it failed to make a good-faith effort to reduce the incidence of contracting out scope covered work and increase the use of its Maintenance of Way forces 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 T. Gustavson, Jr., C. Hawley, D. Rodriguez, J. Edges, S. Langenfeld, L. Heitman, J. Frank, D. Kopp, K. Mielke, R. Kuhl, H. Sauer, R. Harrison, D. Braaten, D. De Witt, D. Dietrich, D. Kaminski and S. Lehmann shall each be compensated ‘*** for an equal share of all hours of the lost work opportunity, reportedly *forty eight (48) hours at straight time, twenty four (24) hours of***

overtime and twenty-four (24) hours of double time, at the applicable rates of pay.’ (Emphasis in original.)”

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 contends that the Carrier violated the Agreement on April 10 and 11, 2013, when it assigned an outside contractor, Snelton, to perform track maintenance and repair work at Mile Post 115 on the Shoreline Subdivision following a derailment. According to the Organization, a number of Snelton employees used two crawler hoes and a bulldozer to perform grading work as well as transporting and installing twelve 40' track panels. The work performed is routine track maintenance work that has historically, customarily and traditionally been performed by Maintenance of Way forces, bringing it within the scope of the Agreement. The Carrier failed to comply with the notice and conferencing requirements of Rule 1B. Nor did the Carrier establish that the work was contracted out pursuant to one of the bases for contracting set forth in Rule 1B. There was no emergency, and if there was, the Carrier's own MoW forces could have performed the work.

According to the Carrier, the Organization has failed to meet its burden of proof. A derailment on April 9, 2013, presented an emergency situation, under which the Carrier is relieved of the 15-day notice requirement under Rule 1B and is permitted greater latitude in using outside forces to deal with the emergency.

In addition to the sections that set forth the requirements for advance notice, conferencing on proposed contracting, and the bases on which scope-covered work can be contracted out, Rule 1B addresses emergency situations:

“Nothing contained herein shall be construed as restricting the right of the Company to have work customarily performed by employees included within the scope of this Agreement performed by contract in emergencies that affect the movement of traffic when additional force or equipment is required to clear up such emergency condition in the shortest time possible.”

This Board has previously defined an emergency as “an unforeseen combination of circumstances which calls for immediate action.” (Award 10965, cited in Third Division Award No. 20527) The evidence in the record establishes that the April 9, 2013, derailment qualified as a genuine emergency: Train LPA7909 derailed five cars at approximately Milepost 115.0 on the Shoreline Subdivision. The impact of the derailment included over 650' of damaged track (rail, ties and ballast), a 36" steel culvert that had been smashed, and damage to the train cars. The record includes a statement from Chase Nichols, Director of Track Maintenance:

“This was during a derailment where we had the subdivision shut down which is in full agreement with Rule 1 of the BMW CNW agreement.”

Under Rule 1B, the Carrier is permitted to utilize contractors “in emergencies that affect the movement of traffic when additional force or equipment is required to clear up such emergency condition in the shortest time possible.” The Board has ruled in the past that:

“In this Division and in the other Divisions of the Board it is well established that the Carrier, in an emergency, has broader latitude in assigning work than under normal circumstances; in an emergency the Carrier may assign such employees as its judgment indicates are required and it is not compelled to follow normal Agreement procedures.” (Third Division Award No. 20527, Lieberman)

The facts established in the record put the situation at Mile Post 115.0 on the Shoreline Subdivision on April 9, 2013, and for several days thereafter squarely in the category of a legitimate emergency. Under Rule 1B, the Carrier was permitted to use contractor forces in addition to its own forces to restore service to the line as quickly as possible. The Carrier did not violate the Agreement.

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 16th day of July 2019.