

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43824
Docket No. MW-42608
19-3-NRAB-00003-140293**

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 excess ballast from switches) at Mile Post 103.600 on the Orin Subdivision on August 14, 15 and 16, 2012 (System File C-12-C100-462/10-12-0711 BNR).**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with a 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 L. Gettert and G. Himle shall now each be compensated for forty-two (42) 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.

This claim arose after the Carrier assigned outside forces (RJ Corman) to perform routine track maintenance work (cleaning excess ballast from switches) on August 14, 15 and 16, 2012, at Mile Post 103.600 on the Orin Sub-Division in the Powder River Basin, using ordinary equipment and a vacuum truck. It is the third of three claims relating to the same February 13, 2012, Notice from the Carrier that it intended “to contract for a vacuum truck, as it has done in the past, to perform the necessary cleaning and maintenance on switches, switch heaters, and other track equipment” on all of the sub-divisions in Powder River West and Powder River North, starting approximately March 1, 2012.

The Board has already analyzed the Notice, in Award 43708. The only distinction between the cases is the dates and locations of when and where the work was done. The parties made the same arguments in this case as they did in Award 43708, and the Board adopts the same rationale to conclude that the Notice was not adequate under the Note to Rule 55. Claimants are each entitled to be paid at straight time rates the equivalent number of hours as worked by the contractor forces.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 4th day of September 2019.