

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44287  
Docket No. MW-43529  
20-3-NRAB-00003-200431**

**The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.**

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

**PARTIES TO DISPUTE: (**

**(BNSF Railway Company (Former Burlington Northern  
(Railroad Company)**

**STATEMENT OF CLAIM:**

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

- (1) The Agreement was violated when the Carrier assigned outside forces (Rail Pros) to perform Maintenance of Way and Structures Department work (flagging duties in connection with providing Form B track protection for contractors extending a siding) between Mile Post 196.700 and Mile Post 198.000 on the Dickinson Subdivision, Montana Division on September 27, 29 and October 1, 2014 (System File B-M-2809-EN/11-15-0181 BNR).**
- (2) The Agreement was further violated when the Carrier failed to make a good-faith attempt to reduce the incidence of subcontracting and increase the use of its Maintenance of Way forces or reach an understanding regarding the aforesaid work as required by the Note to Rule 55 and Appendix Y.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant R. Zimmerman shall now be compensated for sixteen (16) hours at his applicable straight time rate of pay and nineteen (19) hours at his applicable overtime rate 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.

The Claimant has established and holds seniority within various classifications of the Carrier's Maintenance of Way Department. On September 27 and 29, 2014 and October 1, 2014, the Carrier assigned outside contractors (Rail Pros) to provide on-track protection in connection with a track construction work being performed, at the siding at Hodges Montana on the Dickinson Subdivision, Montana Division. Specifically, employees of the outside forces, performed ordinary flagging work while the Claimant was available.

The Organization filed this claim which was appealed to the highest officer on-property. As the parties were unable to resolve the claim, it is now properly before this Board for final adjudication.

The Organization contends that the Carrier failed to comply with the provisions of the Note to Rule 55 and Appendix Y. It contends that the disputed flagging work is customarily and historically performed by its members and that the work in question did not require special equipment or special skills not possessed by Maintenance of Way forces.

The Carrier contends that it embarked on a large-scale capacity expansion project on the Montana Division, and the flagging work was one small part of the large-scale capacity expansion project. As such, the Carrier contends that it properly notified the Organization that it was not adequately equipped to perform the disputed work.

After consideration of the entire record, the Board concludes that the Carrier provided adequate notice of contracting out of the expansion project and the disputed flagging work. The Carrier demonstrated that it was not adequately equipped to perform the disputed work and thus, the exception to the Note to Rule 55 applied to this contracted work. 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 23rd day of October 2020.