

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44288
Docket No. MW-43530
20-3-NRAB-00003-200432**

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

**(Brotherhood of Maintenance of Way Employes 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 protection of workers and equipment) between Mile Post 123.0 and Mile Post 125.0 on the Dickinson Subdivision, Montana Division on October 1, 13, 14 and 15, 2014 (System File B-M-2807-EN/11-15-0179 BNR).**
- (2) 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 protection of workers and equipment) between Mile Post 133.400 and Mile Post 133.700 on the Dickinson Subdivision, Montana Division on October 3, 7, 8, 17, 18 and 20, 2014 (System File B-M-2808-EN/11-15-0180).**
- (3) 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 protection of workers and equipment) between Mile Post 113.0 and Mile Post 115.0 on the Dickinson Subdivision, Montana**

Division on October 3 and 7, 2014 (System File B-M-2811-EN/11-15-0183).

- (4) 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.
- (5) As a consequence of the violations referred to in Parts (1) and/or (4) above, Claimant J. Haas shall now be compensated for thirty-two (32) hours at his applicable straight time rate of pay and nine (9) hours at his applicable overtime rate of pay.
- (6) As a consequence of the violations referred to in Parts (2) and/or (4) above, Claimant J. Haas shall now be compensated for forty (40) hours at his applicable straight time rate of pay and thirty-eight and one-half (38.5) hours at his applicable overtime rate of pay.
- (7) As a consequence of the violations referred to in Parts (3) and/or (4) above, Claimant J. Schumacher shall now be compensated for sixteen (16) hours at his applicable straight time rate of pay and three (3) 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 instant dispute is comprised of three claims that were initiated separately on the property and were eventually addressed in combination by the parties through the claim handling process on the property beginning with the Carrier's letter of declination dated May 14, 2015. Claimants have established and retained seniority in various classifications within the Carrier's Maintenance of Way and Structures Department.

On October 1, 13, 14 and 15, 2014, the Carrier assigned outside forces (Rail Pros) to perform flagging in connection with providing protection of workers and equipment between Mile Post 123.0 and Mile Post 125.0 on the Dickinson Subdivision of the Montana Division.

On October 3, 7, 8, 17, 18 and 20, 2014, the Carrier assigned outside forces (Rail Pros) to perform flagging in connection with providing protection of workers and equipment from between Mile Post 133.400 and Mile Post 133.700 on the Dickinson Subdivision of the Montana Division.

On October 3 and 7, 2014, the Carrier assigned outside forces (Rail Pros) to perform flagging in connection with providing protection of workers and equipment from between Mile Post 113.0 and Mile Post 115.0 on the Dickinson Subdivision of the Montana Division.

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 of the parties' Agreement. The Claimants were readily available to perform the subject work and would have performed this work had the Carrier afforded them the opportunity to do so.

The Organization further contends that the subject work is scope covered and may only be contracted out after the Carrier has notified the General Chairman, in writing, of its intent to contract out; and provided the General Chairman the opportunity to discuss the matters surrounding the contracting out transaction in a

good-faith attempt to reach an understanding. The Organization contends that a review of the on-property record demonstrates that no contracting notice was provided for the claimed work.

The Carrier contends that it embarked on a large-scale capacity expansion project on the Montana Division. It further contends that on-property precedent has already determined that BNSF forces do not perform new construction projects of the magnitude and type as found in this capacity expansion project. The Carrier further contends that the Company does not have an obligation to piecemeal out small portions of more complex projects simply because its own employees might occasionally perform some of these peripheral work items in isolation.

However, a careful review of the on-property record shows that it contains no notice covering the disputed work. A Carrier may contract out work which is customarily performed by bargaining unit members only after it has provided sufficient notice and meeting one of the exceptions listed in the Note to Rule 55. Where the record contains no evidence of such a contracting notice, this Board cannot find that the Carrier has satisfied its burdens under the Agreement.

The Carrier violated the parties' Agreement. The consolidated claims seek compensation for specific listed dates on which outside forces performed claimed work. The Claimants are entitled to compensation for those listed dates.

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 23rd day of October 2020.