

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44300
Docket No. MW-43644
20-3-NRAB-00003-200444**

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 (CW&W Contractors, Inc.) to perform Maintenance of Way and Structures Department work (install and remove a set out track used by Regional System Tie Production Gang TP-09 to tie up equipment) at Mile Post 43.43 on the Conroe Subdivision of the Gulf Division on January 27, 28 and 29, 2015 (System File C-15-C100-74/10-15-0164 BNR).**
- (2) The Agreement was further violated when the Carrier failed to notify the General Chairperson in writing in advance of its intent to contract out this work or 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 concerning such contracting 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, I. Sanchez, A. Bushu, J. Allen, C. Fredrickson, G. Gaither, M. Henry and D. Morrell shall now each be paid 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.

The Claimants have established and hold seniority within various classifications of the Carrier's Maintenance of Way Department. On January 27, 28 and 29, 2015, the Carrier assigned CW&W Contractors, Inc. to install and remove a set out track used by Regional System Tie Production Gang TP-09 to tie up equipment at Mile Post 43.43 on the Conroe Subdivision of the Gulf 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 work of installing and removing track is typical Maintenance of Way work, which has customarily and historically been assigned to and performed by the Carrier's Maintenance of Way forces and is contractually reserved to them.

The Organization further contends that the Carrier failed to comply with the requirements of the Note to Rule 55 when it failed to notify the General Chairman, in writing, of its plans to assign outside forces to perform the work involved in this contracting transaction. The Organization contends that the Carrier's assertion that the work of installing and removing a set out track used by Regional System Tie Production Gang TP-09 to tie up equipment was covered under a separate bargaining agreement is in direct contrast to Rule 7 of the parties' Agreement.

The Carrier contends that the contracting took place in Conroe, TX on the Gulf Division Seniority District 800, which is governed by the ATSF Agreement. The

Carrier further contends that in accordance with Appendix 8 of the ATSF Agreement, it provided a contracting notice to the proper bargaining representative—the ATSF—covering the claimed work. The Carrier contends that the Organization filed this claim on behalf of the Claimants even though it did not take place on their territory. Therefore, the Carrier contends that the rules cited by the Organization do not govern this dispute.

The Carrier contends that the Claimants could not have performed this work because they are Regional and System-wide Gang employees and the contracting took place on the ATSF territory. Furthermore, the Carrier contends that the Claimants were incapable of performing this work because TP-09 is a Tie Production Gang that performs large scale tie replacement work. They do not perform divisional construction work nor do they have the equipment to do so. They do not have excavators or excavator operators.

There is no dispute that the work occurred and was performed as claimed. However, based on the record, the Organization has failed to demonstrate that the parties' Agreement applied to the claimed work, or that its members were capable of performing the duties. Under these circumstances, the claim must be dismissed.

AWARD

Claim dismissed.

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.