

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44303
Docket No. MW-43684
20-3-NRAB-00003-200447**

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 (R. J. Corman) to perform Maintenance of Way and Structures Department work (sorting, loading, unloading and hauling Carrier owned track ties) between the Gavin Yard Shop and Berthold, North Dakota beginning February 7, 2015 through February 16, 2015 (System File T-D-4646-E/11-15-0338 BNR).**
- (2) The Agreement was further violated when the Carrier failed to notify the General Chairman in writing in advance of its intent to contract out the aforesaid 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 B. Miller, L. Bellew, D. Dahm, J. Faul, K. Brandt, T. Hanson, D. Mantz, D. Wivholm, D. Wald, R. Rostad and R. Axtman shall now receive an equal share of four hundred forty (440) hours of straight time and six hundred sixty (660) hours of overtime at their respective rates of pay for all hours worked by the contract employes in performance of the above-cited work.”**

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 ("MOW") Department, including foreman, machine operator, truck driver and laborer. Beginning on February 7, 2015 and continuing through February 16, 2015, the Carrier assigned outside forces (R. J. Corman) to perform sorting, loading, unloading and hauling Carrier owned track ties between the Gavin Yard Shop and Berthold, North Dakota.

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 claimed work is customarily and historically performed by the Carrier's Maintenance of Way forces and is contractually reserved to them. The Organization contends that the Carrier failed to notify the General Chairman of its decision to assign outside forces to perform this work. The Organization contends that the Carrier may only assign its work to outside contractors under certain specified conditions and after notice to and conferencing with the Organization.

The Carrier concedes that it contracted this work but contends that it has done so for many years. The Carrier contends that it provided notice in compliance with the Note to Rule 55 which covered the claimed work.

The Organization demonstrated that this was Scope-covered work. On June 5, 2013, the Carrier provided notice to the Organization of multiple, multi-phase, multi-year projects which had been underway in Gavin Yard for some time. This notice followed

previous notices that the Carrier planned “to contract all work associated with the capacity expansion project located in Gavin Yard.”

In an on-property award, Third Division Award 41223, this Board denied a claim after recognizing that the Carrier was involved in “a huge undertaking that could easily require the assistance of outside forces to complete in a timely manner – and completing such a large project quickly, with a minimum disruption to the existing service, is an important and legitimate goal for the Carrier.”

Previous on-property awards have held that the Carrier did not violate the Agreement when it contracted out such projects. Third Division Awards 37433, 37434, 38383, and 41222. In Third Division Award 43662, the Board found that the “rationale behind these awards is that large-scale construction or capacity expansion projects that ordinarily involve unit work cannot realistically be performed by Carrier forces.” Applying that rationale to this project, that Board wrote,

“The Carrier determined that it would need additional forces to complete a multi-phase project in the Gavin Yard because it was not adequately equipped to handle all aspects of a project of this magnitude and that its forces did not have the necessary skills to perform specialized dirt work.”

Although the claimed work was customarily performed by the MOW forces, the Carrier provided sufficient notice of its intention to use outside forces in the capacity expansion project at Gavin Yard. As a result, the Organization has not shown a violation of the parties’ Agreement by use of outside contractors in a project of this magnitude.

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.