

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44304  
Docket No. MW-43739  
20-3-NRAB-00003-200448**

**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 (Stack Brother) to perform Maintenance of Way and Structures Department work (remove old door, install new car door heaters and piping) at the New Car Dump, at the Allouez Taconite Facility in Superior, Wisconsin on the Twin Cities Division on January 27, 28, 29, February 3, 4, 5, 6, 7, 8, 9 and 10, 2015 (System File T-D-4647-M/11-15-0341 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 D. Tollers and B. Hartwig shall now be compensated for one hundred twenty (120) hours at their respective overtime 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, including as water service foreman and water service mechanic. On January 27, 28, 29, February 3, 4, 5, 6, 7, 8, 9 and 10, 2015, the Carrier assigned outside forces (Stack Brother) to remove old door, install new car door heaters and piping at the New Car Dump, at the Allouez Taconite Facility in Superior, Wisconsin.

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 this work has customarily and historically been performed by the Carrier's Maintenance of Way forces and it is contractually reserved to them.

The Organization further contends that the four notices dated August 20, 2012, August 25, 2012, February 19, 2013 and September 12, 2013 did not notify the General Chairman of the Carrier's intent to assign outside forces to perform the work claimed herein of removing old doors, installing new car door heaters and piping.

The Carrier contends that the Organization failed to provide any proof to support its claim. The Carrier contends that the Organization failed to show that the claimed work was performed by its members to the exclusion of others, system-wide.

The Carrier contends that it provided sufficient notice under the Note to Rule 55 to permit it to contract out this work as part of a large-scale expansion project. It points to the notice dated August 20, 2012, amended multiple times, to wit:

**“BNSF plans to contract all work associated with the facility improvements at the Allouez Taconite Facility located in Superior, WI. The work will consist of remodel of various components of the facility including drainage, access roads, building upgrades, and demolition of certain out-of-service features. BNSF forces do not possess the necessary specialized dirt work skills to complete this project. Moreover, BNSF is not adequately equipped to handle all aspects of this work.”**

The record shows that even if the claimed work is customarily performed by the Carrier’s forces, the Carrier gave adequate notice to the Organization that this was part of an expansion project. The Notice clearly identifies the size of the project and expressly states that the Carrier was not adequately equipped to handle all aspects of the work. In Award 43341, this Board wrote,

**“In Awards 43258 and 43259 the Board found the above-noted on-property precedent persuasive, finding that large construction projects will involve a larger-than-usual investment in labor and equipment resources—an investment needed to complete the project in a timely fashion. Whether the Board concludes that such work is not “customarily performed” (PLB 4768, Award 22) or that the Carrier is “not adequately equipped to handle the work,” the end result is an exception set forth in the Note to Rule 55 and a denial of the claim. Furthermore, the Carrier is not required to piecemeal the project to give the work to existing Maintenance of Way forces.”**

Here, the claimed work is a part of the large project that it was undertaken and was one piece of the work that was contracted out. The Carrier was not obligated to piecemeal this project. The Carrier did not violate the parties’ Agreement.

**AWARD**

**Claim denied.**

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**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.**