

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44381  
Docket No. MW-42887  
21-3-NRAB-00003-190361**

**The Third Division consisted of the regular members and in addition Referee Andria S. Knapp 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 (Hulcher, Inc.) to perform Maintenance of Way and Structures Department work (install track retarder panels) in Galesburg Yard on September 10, 11, 12 and 13, 2013 (System File C-14-C100-5/10-14-0018 BNR).**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with proper advance notice of its intent to contract out the work referred to in Part (1) above 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 C. Wattenberger, M. Slocum, J. Wright, K. Pugh and M. Harn shall each be compensated forty (40) hours at their respective straight time rates and thirteen (13) hours at their respective overtime rates of pay. Claimants J. Moore, M. Ward, M. Churchill, T. Reed and J. Cadwell shall each be compensated twenty-eight (28) hours at their respective straight time rates and twelve (12) 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.

This case arose on September 10-13, 2013, when a contractor, Hulcher, Inc., loaded, unloaded and installed car retarders and a track panel in the Galesburg Yard, as part of the overall Galesburg Yard expansion project. The Organization contends that the Carrier failed to provide adequate notice under Rule 55, in that the June 2, 2011, notice from the Carrier on the project failed to mention the track panel. The Organization further contends that the work in dispute is work traditionally, customarily and historically performed by MoW forces and that there was no basis under Rule 55 to contract it out. The Carrier argues first, that the claim failed adequately to identify the work in dispute. Second, the work is only a portion of the larger ongoing expansion project at the Galesburg Yard, and the Carrier is not required to piecemeal portions of a larger project.

The record supports the Organization's position that the installation of the track panel should have been assigned to BMW forces, and the Claim shall be sustained. However, the remedy requested by the Organization is excessive, because installing the panel would not have taken the full claim period. Accordingly, the matter is remanded back to the parties for a determination of the appropriate remedy.

**AWARD**

Claim sustained in accordance with the Findings.

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**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 13th day of April 2021.**