

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44382
Docket No. MW-42944
21-3-NRAB-00003-190362**

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 (Chemtron) to perform Maintenance of Way and Structures Department work (welding rail) between Mile Posts 209 and 216 on the Ottumwa Subdivision of the Nebraska Division on August 5 through 12, 2013 (System File C-13-C100-386/10-13-0675 BNR).**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with a proper notice 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 M. Lynch and W. Oehlert shall now each ‘... be paid all straight time hours, and all overtime hours expended by the outside forces in performing this work at their appropriate rates of pay as settlement of this claim. ***’”**

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 dispute arose on in August, 2013, after the Carrier contracted with an outside contractor, Chemtron, to de-stress rail and weld the rail back together at Milepost 209-216 on the Ottumwa Subdivision, in the Nebraska Division. According to the Organization, two Chemtron employees worked twelve hours a day from August 5 through August 12, 2013, using a flashbutt electric welder. The Organization filed this claim on September 18, 2013.

This case was filed prior to a global settlement regarding staffing for electric flash butt welding work that the parties entered into on September 12, 2018. Pursuant to that agreement, the Board finds that the work at issue in this claim involves staffing and is therefore covered by the settlement. The claim being covered by the settlement, the case is now moot and must be dismissed.

AWARD

Claim dismissed.

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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 13th day of April 2021.