

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44386
Docket No. MW-42964
21-3-NRAB-00003-190367**

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp 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 Carrier violated the Agreement when it assigned outside forces (Gullit Construction) to perform Maintenance of Way and Structures Department work (clear ground and dump rock) to create approaches on the east and west end of the Bellefontaine bridge on the Hannibal Subdivision, Springfield Division beginning on September 24, 2013 through October 14, 2013 and continuing (System File C-14-C100-28/10-14-0047 BNR).**
- (2) The Agreement was further violated when the Carrier failed to properly notify the General Chairman in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereto regarding 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 J. Ellingsworth, D. Jennings, M. Semande, C. Rice, K. Bowen, J. Abernathy, R. Lene, W. Ringhausen, S. Mann, S. Constable, T. Maglioacchetti, M. Churchill, R. McCarthy and R. Hopkins shall now each be compensated for ‘...**

all hours worked by the contractor employees, at their appropriate rate of pay as settlement of this claim.' beginning on September 24, 2013 and continuing."

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 claim arose when the Carrier contracted with Gullit Construction to perform work associated with renovating the Bellefontaine Bridge on the Hannibal Subdivision, Springfield Division. Specifically, Gullit cleared the ground and dumped rock to make a ballast approach on the east and west ends of the bridge. The work commenced September 24, 2013, and was ongoing when the Organization filed its claim on November 5, 2013.

The Organization contends that the work was improperly contracted out and that the Carrier further violated the parties' Agreement when it failed to provide notice to the Organization as required by the Note to Rule 55. Bridge work has traditionally and historically been performed by MoW forces, so the notice requirement applies. BNSF forces could have performed the work and it should not have been contracted out. According to the Carrier, it did provide notice, dated January 4, 2013, and the notice clearly specified why the work needed to be contracted out: BNSF did not have enough of the necessary heavy equipment, nor did it have the specialized equipment needed to perform the bridge renewal. Moreover, its forces did not have the specialized skills required to operate the specialized equipment. The project was an extensive one, and the January 2013 notice covered the entire project, including the work that was performed on the bridge approaches in September and October 2013. Nor is the Carrier required to piecemeal a portion of the project. The reasons for contracting the work fall within the exceptions set forth in the Note to Rule 55, and the claim should be denied.

The January 4, 2013, letter from the Carrier to the Organization states:

As information, BNSF is renewing the bridge between MP 18.5 and MP 19.3 on the Hannibal Sub-Division. BNSF plans to replace approximately 1,760 l.f. of truss spans and 880 l.f. of bridge with drilled-shaft foundations over the Missouri River and shift the mainline and new bridge to the newly-constructed foundations. BNSF will contract for all associated heavy equipment with operators such as, excavators, ... In addition, BNSF will contract for specialized equipment such as, off-track cranes, BNSF does not possess all the necessary equipment for this work, nor do BNSF forces possess the specialized skills necessary to perform the dirt work, foundation auger drills, or operate the barge-mounted equipment and tugs.

The notice went on to describe in detail the types of work that would be performed by outside forces, and concluded that the work was anticipated to start February 1, 2013. The notice clearly encompassed the work in dispute in this claim, so the Carrier met its obligation under the Note to Rule 55 to provide notice to the Organization of its intent to contract out work.

Regarding the basis for contracting out the work, the record includes information regarding the need for specialized equipment, particularly off-track cranes, barge-mounted cranes and tugs, as the bridge crosses the Missouri River. Such equipment is neither owned by the Carrier nor ordinarily utilized by MoW forces. The record also includes an explanation of Micropile technology and mass concrete pouring methods, again, work that Carrier forces do not ordinarily perform. Rule 55 requires that work that is customarily, historically and traditionally performed by BMWE-represented forces may only be performed by outside forces when certain criteria are met:

[S]uch work may only be contracted provided that special skills not possessed by the Company's employees, special equipment not owned by the Company, or special material available only when applied or installed through supplier, are required; or when work is such that the Company is not adequately equipped to handle the work, or when emergency time requirements exist which present undertakings not contemplated by the Agreement and beyond the capacity of the Company's forces.

The notice for the Bellefontaine Bridge project clearly specified the need for specialized equipment that its own forces did not have the skills to operate, and established that the project could properly be contracted out.

Finally, it is well established through Board precedent that the Carrier is not required to piecemeal portions of a large project in order to provide work for its own forces. The work at issue in this claim was indisputably part of the larger Bellefontaine Bridge renewal project, which the Carrier could properly contract out. There being no obligation for the Carrier to piecemeal the work, the claim is denied.

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 13th day of April 2021.