

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44389
Docket No. MW-42990
21-3-NRAB-00003-190370**

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 (Ames Construction) to perform Maintenance of Way and Structures work (prepare for and pour concrete pad) for a new compressor building on the East side of the hump tower in the Galesburg Yard on September 25, 26 and 27, 2013 (System File C-14-C100-37/10-14-0064 BNR).**
- (2) The Agreement was further violated when the Carrier failed to properly notify and confer with the General Chairman 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. Larkin, L. Stockdale, R. Hart and T. Nash shall each be compensated for twenty-four (24) hours straight time at their respective 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.

On September 25-27, 2013, an outside contractor, Ames Construction, prepared for and poured a concrete pad for a new compressor building for the expansion project in the Galesburg Yards, located on the east side of the hump tower. The Organization filed a claim on November 18, 2013, challenging both the lack of notice and the underlying decision to contract out work that has traditionally been performed by MoW forces. The Carrier responded that it had provided notice and that the work in dispute was part of the Galesburg Yard expansion project, which was of such a magnitude that existing forces were not adequately equipped to perform the work.

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.

If the Carrier wants to contract out "such work," Rule 55 requires that it provide notice to the Organization not less than fifteen days prior to the proposed contracting out.

On April 30, 2013, the Carrier sent the Organization notice of its intention to contract out “all work associated with the capacity expansion project located near the bowl tracks in Galesburg Yard on the Chicago Division. The April 30 notice amended an earlier notice, dated March 26, 2013:

That earlier letter is hereby amended to the extent necessary to include the demolition of existing out-of-service light masts and lattice towers and installation of new light towers. The work to be contracted includes, but is not limited to demo/remove existing equipment (including concrete foundations, utility and steel); pour 6 new reinforced concrete foundations (including necessary excavation and grading); installation of 6 100 l.f. light towers/masts; final grade of affected installation area; and debris removal.

In its January 13, 2014, response to the claims, the Carrier referenced and included copies of the April 30, 2013, notice as well as a notice dated October 8, 2013, that amended the earlier March 26 and April 30 notices:

Those earlier notices are hereby amended to the extent necessary to include the installation of new yard air lines. The work to be contracted included, but is not limited to, demo/remove existing air-line equipment; install approx. 400 l.f. new air lines; *pour new reinforced concrete compressor pad* (including necessary excavation and grading); installation of necessary valves and tie-ins to existing lines; final grade of affected installation area; and debris removal.

It is anticipated that this work will begin on approximately October 24, 2013. (Emphasis added.)

Rule 55 requires that notice be provided to the Organization not less than fifteen days prior to the start of the work at issue. The April 30, 2013, notice references improvements near the bowl tracks in the Galesburg Yard. But it is not entirely clear where the “6 new reinforced concrete foundations” are located. However, the rest of the notice addresses construction of new light towers, and the concrete foundations could be for the new towers. There is no mention of a concrete foundation for a new compressor pad. However, the October 8, 2013, amended notice explicitly includes “pour new reinforced concrete compressor pad (including necessary excavation and grading.” From the fact that the Carrier amended its earlier notice to add a new

compressor pad, one can reasonably conclude that that project was not included in the prior (April 3) notice.

But Rule 55 requires that notice of any proposed contracting out must be provided not less than fifteen days before the work commences. Here, the October 8, 2013, notice was issued *after* the work was performed September 25-27, 2013. The Carrier violated the notice provisions of Rule 55 when it issued an untimely notice. In such cases, the Board will sustain the claim.

AWARD

Claim sustained.

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.