

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44390  
Docket No. MW-42991  
21-3-NRAB-00003-190371**

**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 Agreement was violated when the Carrier assigned outside forces (Denver Transit Program) to perform Maintenance of Way and Structures work [cut up track into forty (40) foot sections and haul away] between Mile Posts 3.4 and 4.0 in Denver, Colorado on the Front Range Subdivision, Power River Division on November 8 and 9, 2013 (System File C-14-C100-51/10-14-0070 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 H. Miller, C. Steurke, B. McInnis, T. Wilhelm and D. Gutierrez shall each be compensated for eight (8) hours straight time and eight (8) hours overtime 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.

The Organization filed this claim, alleging that the Carrier violated Rule 55 of the parties' Agreement when Denver Transit Program went onto the Carrier's Right of Way between Mile Post 3.4 and Mile Post 4.0 in Denver, where there was track that had been removed from service laying in the right of way, cut the track into 40' panels, and removed them. According to the Organization, removing track is work that has been historically, traditionally and customarily performed by MoW forces, which brings it within the scope of Rule 55. The Carrier failed to give notice of the contracting out, and there was no basis for the work to be contracted. The Carrier responded that the track in dispute had been abandoned when BNSF realigned the main track at MP3.4-4.0. BNSF did not contract with Denver Transit to perform the claimed work. Denver Transit Partners removed the track to continue their grading work that was part of their construction in the area.

Rule 55 only applies when work is done on BNSF property. The evidence in the record here establishes that BNSF had in fact abandoned the track that is in dispute. Thus, the track was no longer within the scope of the Agreement. Moreover, the Carrier did not contract with Denver Transit Partners to remove it. Denver Transit was engaged in a massive renovation of its transit system and removed the track of its own accord as part of that renovation. The Carrier is not responsible when a third party removes abandoned track on its own initiative, for its own purposes, and at its own expense.

**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 13th day of April 2021.**