

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44396  
Docket No. MW-42998  
21-3-NRAB-00003-190377**

**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 (Hulcher) to perform Maintenance of Way and Structures work (install switch) at Lynn Center, Illinois on the Barstow Subdivision at Mile Post 26.163 on October 11, 12, 13 and 18, 2013 (System File C-14-C100-59/10-14-0093 BNR).**
- (2) The Agreement was further violated when the Carrier failed to 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, Claimant E. Curl shall now be compensated for twenty-seven and one-half (27.5) straight time and three (3) hours overtime at his respective rates of pay. Claimant W. Gibbons shall now be compensated for twenty-seven and one-half (27.5) hours straight time and three (3) hours overtime at his respective rates of pay. Claimant M. Ward shall now be compensated for twenty-seven and one-half (27.5) hours straight time and three (3) hours overtime at his respective rates of pay. Claimant J. Byrnes shall now be compensated for twenty-seven and one-half (27.5) hours straight time and three (3) hours overtime at his respective rates**

of pay. Claimant D. Clevenger shall now be compensated for eight (8) hours straight time and one-half (.5) hour overtime at his respective rates of pay. Claimant M. Semande shall now be compensated for five and one-half (5.5) hours straight time at his respective rate of pay. Claimant R. Jarvis shall now be compensated for five and one-half (5.5) hours straight time at his respective rate 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 October 11, 12, 13 and 18, 2013, the Carrier used a contractor, Hulchers Inc., to install switches at Lynn Center, Illinois, on the Barstow Subdivision at Mile Post 26.163. The Organization filed a claim alleging that there was no contractual basis to contract out the work; the Carrier demurred, stating that the work at issue fell within the “special equipment” and “special skills” exceptions to Rule 55.

The Carrier sent a notice to the Organization by letter dated September 5, 2013:

As information, BNSF plans to contract for additional heavy equipment, excavators, off-track cranes or side booms, large haul trucks, graders, and F/E loaders with operators, to assist BNSF forces with the switch renewals located at MP 26.16 and the yard on the Barstow Sub-division. BNSF is not adequately equipped to handle all aspects of this project, moreover, BNSF forces do not possess the specialized skills for the dirt work or synchronized tandem-excavator movements....

Rule 55 requires that work that is customarily, historically and traditionally performed by BMW-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 record establishes that "special equipment not owned by the Company" was required to perform the work. Under Rule 55, then, the Carrier was permitted to contract out the work.

**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.