

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44397
Docket No. MW-42999
21-3-NRAB-00003-190378**

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 (Tompkins Trucking) to perform Maintenance of Way and Structures Department work (unload cement ties from rail cars and haul them to an area behind the Hump Tower) for the New East way track in the Galesburg Yards on the Chicago Division on October 9, 11, 12 and 14, 2013 (System File C-14-C100-66/10-14-0096 BNR).**
- (2) The Agreement was further violated when the Carrier failed to properly notify and confer with the General Chairman regarding the work referred to in Part (1) above 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 E. Allen, S. Kessler, T. Wolford, K. Kane and G. Kuberski shall now each ‘... be paid 24 hours straight time and 8 hours of overtime each at their appropriate rate 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 October 9, 11, 12 and 14, 2013, at the Galesburg Yard in the Chicago Division when a contractor, Tompkins Trucking, used track hoes and semi-trucks with flat-bed trailers to unload cement ties off of rail cars and haul them to an area behind the Hump Tower for eventual use on the New East Way track. The Organization filed a claim by letter dated December 4, 2013. The Organization contends that the Carrier violated Rule 55 of the parties' Agreement when it failed to provide proper notice of the proposed contracting, and when it contracted out work that has been historically, traditionally and customarily performed by MoW forces, who could have done the work. The Carrier responds that it did provide notice, dated June 2, 2011. Moreover, the work required special equipment. Finally, the work in dispute is part of the larger Galesburg Yard expansion project, which the Carrier properly contracted out, and the Carrier is not required to piecemeal portions of larger projects to its own forces.

The June 2, 2011, notice stated:

As information, BNSF plans to contract all work associated with the capacity expansion project located near the existing AMTRAK Depot in Galesburg Yard on the Chicago Division. This multi-phase project will include extensive track, utility, and dirt work. BNSF is not adequately equipped to handle all aspects of a project with this magnitude, nor do BNSF forces possess the specialized dirt work skills necessary for this portion of the project. The contractor will provide all the necessary heavy equipment, with operators, to perform the specialized dirt work for this capacity expansion. The work to be performed includes, but is not limited

to, install necessary erosion control and SWPPP (including silt fencing); necessary excavation for embankment of 3 new yard tracks; furnish/haul/unload necessary sub-grade material for 3 new yard tracks and third main track; furnish/haul/unload necessary sub-ballast material for 3 yard tracks and 1 new main track; grade/build up/compact 3 approx. 8,200 l.f. yard tracks; necessary reconfigure 2 interlocker plants (Knox St. and A-Plant West); grade/build up/compact approx. 8,400 l.f. of 3rd Main; install new No. 24 X-over plant to Mendota Sub; install/extend necessary trench drains, manholes, and culverts; assist with placement of necessary turnout components; necessary horizontal boring of new drain lines; modification of necessary utility lines; install necessary landscaping; and debris removal.

It is anticipated that this work will begin on approximately June 21, 2011.

The question of what constitutes adequate notice is a perennial source of disagreement between the parties. The Board has held previously that notice must be sufficient for the Organization to be able to determine if it wants to protest the proposed contracting out and to be able to prepare for meaningful discussions with the Carrier if it does. While a “perfect” notice would include all the details of who, what, when, where, how and why, the Board has also recognized that with very large capacity expansion projects, it is not realistic to specify locations, dates, and other information, due to the fact that large construction projects are subject to hiccups in their projected progress—foul weather and material delays may slow things down, while fair weather and good working conditions may mean that things move forward more quickly than anticipated. The notice at issue here is sufficient for the purposes of Rule 55: it gives detailed information on the type of work to be performed by contractors and its location, along with a projected start date. The fact that the work occurred more than two years after the notice does not mean that the notice was ineffective. It may be more indicative of the size of the project, which included installing and/or renewing four tracks that were each over a mile long

Rule 55 requires that work that is customarily, historically and traditionally performed by BMWF-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.

In this case, the Carrier indicated that “BNSF is not adequately equipped to handle all aspects of a project with this magnitude, nor do BNSF forces possess the specialized dirt work skills necessary for this portion of the project.” This brings the proposed contracting squarely within the exceptions defined in Rule 55. The Board has previously recognized that the Galesburg Yard expansion project was properly contracted out under Rule 55. Moreover, the Carrier is not required to piecemeal portions of such a large project. Under these circumstances, 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.