

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44401
Docket No. MW-43199
21-3-NRAB-00003-200198**

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 (Herzog) to perform Maintenance of Way and Structures Department work (rail pick up and related work) at various locations between Mile Posts 197 and 171 on the Ottumwa Subdivision, Line Segment 1 on the Nebraska Division beginning on March 21, 2014 through March 28, 2014 (System File C-14-C100-152/10-14-0265 BNR).**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with advance notification of its intent to contract out 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 W. Bellinger and S. Bradley shall now each be compensated for forty (40) hours at the straight time rate of pay and eight (8) hours at the applicable time and one-half 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.

The Organization filed this claim after the Carrier hired an outside contractor, Herzog, to pick up rail on the Ottumwa Subdivision, Mile Posts 197-171, using a piece of equipment known as a Slot Train. The work took place March 21 and March 28, 2014. A Slot Train is a series of open-ended hopper cars linked together and modified so that a modified track-hoe can operate out of the car bed. The advantage of a Slot Train is that it can greatly reduce the amount of time a section of rail needs to be closed for rail pickup. The Carrier does not own a Slot Train, and the contractor hired to perform the work (Herzog) is unwilling to rent or lease it to BNSF without its own operator running the machine. This was not the first time that the Carrier used an outside contractor with a Slot Train to pick up rail. The Carrier provided Notice to the Organization by letter dated December 17, 2013, that stated, in relevant part:

As information, the Carrier plans to continue its ongoing program using an outside contractor's specially equipped cars and machines that pick up scrap steel, perform ditching or clearing work, place rip-rap, pick up ties, ... at various location across the system in 2014.

The equipment used to perform this work is not owned by the Carrier, nor is it available to the Carrier for operation by Carrier forces... BNSF employees will perform incidental work, such as flagging, consistent with the type of work being done with the contract operations.

The Note to Rule 55 establishes the parties' rights and obligations regarding contracting out of bargaining unit work. If the disputed work is work "customarily

performed” by bargaining unit employees, the Carrier may only contract out the work under certain exceptional circumstances:

[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 addition, if the Carrier plans to contract out work on one of these bases, the Note requires the Carrier to notify the Organization “as far in advance of the date on the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereto, except in ‘emergency time requirements’ cases.”

The Board has already considered and decided this exact issue, i.e., whether the Slot Train (or Machine) falls under the exceptions to Rule 55 as a specialized piece of equipment. In Award No. 39915 (09-3-NRAB-00003-040547 (Referee Clauss, 2009), the Board found that the Slot Machine was specialized equipment within the meaning of Rule 55 and that the Carrier did not violate the Agreement when it contracted with an outside contractor for use of its Slot Machine with operators. See also Third Division Award 43705 (Referee Knapp, 2019), which followed the precedent established by the earlier Clauss Award. The Board finds no reason in this case to deviate from its prior Awards. Accordingly, 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.