

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44405  
Docket No. MW-43221  
21-3-NRAB-00003-200343**

**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 (Iron Hyde Construction Company) to perform Maintenance of Way and Structures work (building repair and maintenance and related work) at the Car Shop at the Havelock Shops in Lincoln, Nebraska on April 25, 28, 29, 30, May 1, 5, 6, 7, 8, 12, 13, 14, 15, 19, 20, 21, 22, 27, 28, 29, 30 and June 2, 3, 4, 5, 9, 10, 11 and 12, 2014 (System File C-14-C100-154/10-14-0298 BNR).**
- (2) The Agreement was further violated when the Carrier failed to make a good-faith effort to reach an understanding concerning said contracting 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 R. Thoms, R. Malcolm, R. Wall, M. Whitmore, M. Grote and R. Reimers shall each now ‘... be paid at their respective rates of pay for all of the above-cited hours worked by the outside contractors, as well as, any additional straight time and overtime hours worked by the outside**

contractors, and continuing until the violation ceases, 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.

From April through June 2014, the Carrier utilized a contractor to perform certain building maintenance and repair at the Car Shop at the Havelock Shops in Lincoln, Nebraska. The Organization filed this claim on June 16, 2014, contending that the Carrier violated Rule 55 of the Agreement when the it “contracted to tear off stucco and the brick lower wall and to reweld any rusted out I-beams on the west and east walls at the Car Shop at the Havelock Shops in Lincoln, Nebraska.” According to the Organization, the work performed by the contractor’s employees is work that has historically, customarily and traditionally performed by BNSF’s MoW employees. There are numerous Claimant statements attesting to the work that was performed on various dates by contractors.

The Carrier responded that the disputed work was due to multiple locations of asbestos in the facility, which had to be removed before the planned restoration could begin, and that “[t]he demolition of the wall is part of the environmental containment process that is beyond the scope of work of BNSF employees. The Carrier has historically contracted asbestos abatement work, and it contracted with a specialist environmental remediation company, EMR Incorporated, to do the asbestos removal, which involved 8800 square feet of exterior stucco material from the south walls of the Car Shop. Iron Hyde Construction, the contractor cited by the Organization, was engaged to put the walls, windows, doors, and so on back on the building. The record also includes an invoice from “ESA” with a “Ship to” listing EMR, Inc., for asbestos abatement of the east wall of the Car Shop between March and mid-September 2014.

The Board has previously held that the Carrier does not violate the parties' Agreement when it contracts out asbestos abatement, which requires specialized training and equipment. The record establishes that the underlying purpose of the work in dispute was asbestos abatement, which was followed by repair of the areas abated. It appears that the Organization would separate those two tasks and have the repairs performed by MoW forces. However, that would require piecemealing the asbestos abatement project, which the Board has previously held is not required. Accordingly, the Carrier did not violate the parties' Agreement when it used a contractor to remove and repair asbestos-riddled stucco walls at the Car Shop in Lincoln, Nebraska.

**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.