

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44407
Docket No. MW-43257
21-3-NRAB-00003-200361**

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 (LT Construction) to perform Maintenance of Way and Structures Department work (load, transport and unload track materials and related work) at various locations in connection with the operations of Regional System Production Tie Gang TP-12 on the River and Springfield Subdivisions beginning on June 30, 2014 through and including August 1, 2014 (System File C-14-C100-178/10-14-0367 BNR).**
- (2) The Agreement was further violated when the Carrier failed to notify the General Chairman in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereto 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 the Note to Rule 55 and Appendix Y.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant W. Mattson shall now ‘... be paid two hundred (200) straight time hours and one hundred fifty-five (155) overtime hours, at the Grapple Truck Driver rate of pay,**

for the work performed by the outside contractor on the above-cited claim dates, 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.

Beginning June 30, 2014, and for the next month, the Carrier hired a Grapple Truck and driver from a contractor to assist Regional System Tie Production Gang TP-12. The Grapple Truck owned by the Carrier broke down and was in the shop. The regularly assigned Grapple Truck Driver continued to work with the contractor throughout the period, as the Grapple Truck hauled spikes, rail anchors, tie plates, and wood ties, and transported scrap metals between Mile Post 280.00 in Bassett, Arkansas, and Mile Post 200.00 in Portageville, Missouri. The Organization contends that the work was the same as has historically, customarily, and traditionally been performed by MoW employees. The Carrier contends that the contractor was used on an emergency basis, because its own Grapple Truck was in the shop. The Carrier also objects to the named Claimant, because the assigned Grapple Truck Operator worked with the contractor employee the entire time, and the Claimant worked and was compensated throughout the claimed period as well, hence he lost no work opportunity.

A Grapple Truck is a necessary piece of equipment for a Tie Production Gang. The record includes an e-mail from Roadmaster Raymond Kite, attesting to the fact that the Carrier's own Grapple Truck was in the shop being repaired while the contractor's Grapple Truck was used. As the Carrier's November 14, 2014, letter to the Organization stated, "... in order to continue operating the efficient and highly-valuable Tie Production gang, a grapple truck, with operator was brought in to assist

TP-12. The Company could not simply shut this gang of over 50 employees down for the 15 days necessary to issue a notice.”

The exceptions in the Note to Rule 55’s prohibition on contracting out include “special equipment not owned by the Company,” and “when emergency time requirements exist which present undertakings not contemplated by the Agreement and beyond the capacity of the Company’s forces.” Absent an emergency, the Carrier is required to provide a minimum of 15 days’ notice to the Organization of its intent to contract out work.

The Organization argues that the Carrier’s Grapple Truck being in the shop for repairs is not what is contemplated by the emergency exception to the notice requirements of Rule 55. But let us look more closely at what constitutes an emergency. Emergencies can be large or small. An emergency need not be a derailment, a blizzard, or other catastrophic event. An equipment breakdown may also be an emergency if it has a serious enough impact on operations. Here, a Grapple Truck is necessary to the work of the Tie Production Gang. Once the Carrier's Grapple Truck had broken down, the Gang of more than forty employees would have been forced to shut down its operations entirely for fifteen days if the Carrier were required to give notice of its intention to hire another Grapple Truck from an outside contractor. That cannot have been the intent of the parties in negotiating Rule 55. The loss of the Carrier’s Grapple Truck may not have been an emergency on the scale of, say, a once-in-a-century flood, but it was an emergency nonetheless, in that without it, the entire gang would have been shut down and unable to work. Nor is there evidence in the record that the Carrier could have rented or leased a Grapple Truck in short order. Accordingly, the Carrier did not violate the Agreement when it brought in a Grapple Truck from LT Construction to replace its own truck while it was in the shop for repair.

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.