

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44409  
Docket No. MW-43277  
21-3-NRAB-00003-200363**

**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 (Patrick Construction and Franz Construction) to perform Maintenance of Way and Structures Department work (remove and install track panels and related work) in connection with grade crossing renewal work at various locations between Mile Posts 38.4 and 70.9 on the Sidney Subdivision beginning on May 7, 2014 through May 29, 2014 (System File B-M-2744-E/11-14-0281 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 K. Mitchell, R. Sikveland, T. Rakes and J. Syslo shall now each be allowed ‘... one hundred twenty eight (128) hours of straight time and fifty eight (58) hours at over time, at the 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.

This claim arose in May 2014, when the Carrier used contractors to remove and install track panels, and related work, between Mile Posts 38.4 and 70.9 on the Sydney Sub-division.

Removing and installing track panels is work that has customarily, traditionally, and historically been performed by Maintenance of Way forces. Thus, the work is within the scope of the parties' Agreement, and the Note to Rule 55, which puts constraints on the Carrier's ability to contract out such work, applies. Rule 55 requires that the Carrier provide adequate notice to the Organization in advance of any contracting out.

The Carrier contends that it did provide appropriate notice to the Organization. While it is true that the record includes several contracting notices, none of them specifically refers to the work in dispute here. The Board has consistently held that lack of notice requires that the underlying claim be sustained, and it will follow its prior precedents in this case.

**AWARD**

Claim sustained.

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**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

**Dated at Chicago, Illinois, this 13th day of April 2021.**