

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44411
Docket No. MW-43328
21-3-NRAB-00003-200392**

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 (R. J. Corman) to perform Maintenance of Way and Structures work (clean out switches) in the West Quincy Yards on July 8, 9, 10, 14, 15, 16, 17, 18, 21, 22, 23 and 24, 2014 (System File C-14-C100-189/10-14-0380 BNR).**
- (2) The Agreement was further violated when the Carrier failed to notify the General Chairman in writing of its intent to contract out the aforesaid work and failed to 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 J. Whitehead and T. Maglioacchetti shall each ‘... be paid 96 hours of straight time and 24 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 Claim arose in July 2014, when the Carrier hired an outside contractor with a vacuum truck to clean out switches in the West Quincy Yards on the Hannibal Sub-division. The Organization filed a claim, alleging that the work in dispute is traditional Maintenance of Way work, that the Carrier failed to provide notice, and the work did not meet any of exceptions set forth in the Note to Rule 55. The Carrier responded that the work was undertaken as a result of an emergency, substantial flooding in the area—the switches were being cleared of storm debris.

This Board has consistently held that the Note to Rule 55 contains an exception to both notice and to contracting out for emergencies. If the work were undertaken in response to an emergency, the Carrier did not have to comply with the notice requirement in Rule 55, and it would have greater latitude to subcontract the work than is generally afforded under Rule 55.

The record includes generic information on flooding in Missouri, Illinois and Iowa in early July 2014. However, there is no evidence to support that the Quincy Yards flooded or were affected by flooding elsewhere in the region. Rather, the record includes credible statements from the Claimants to the contrary. EIC Maglioacchetti wrote:

The task the two RJ Corman employees were performing was NOT an emergency of any kind. It was routine maintenance we perform every summer or fall getting the switches ready for winter. It had Nothing to

do with a flood of any sort. The West Quincy Yards **DID NOT FLOOD**, so it was **NOT** considered flood work. It was routine maintenance... (Emphasis in original.)

Claimant James Whitehead wrote:

I was there while they cleaned out the switches in the West Quincy yards. It was not an emergency. The levee would have to break for West Quincy to flood. The depot and all the businesses would be wiped out I can assure that this did not happen.

Upon consideration of the record as a whole, the Board concludes that the Carrier did not meet its burden to prove that an emergency existed that would relieve it of the requirements of Rule 55 regarding contracting out work and providing notice. Accordingly, the Claim is sustained.

AWARD

Claim sustained.

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.