

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44412  
Docket No. MW-43353  
21-3-NRAB-00003-200391**

**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 (Hulchers, Ames and Petticord Construction) to perform Maintenance of Way and Structures Department work (rebuilding a bridge and related work) at Mile Post 15.02 on the Oneill Subdivision on June 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 30 and July 1, 2 and 3, 2014 (System File C-14-C100-187/10-14-0382 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants F. Fankhauser, J. L’Heureux, J. Menousek, C. Clifton, L. Hayes, J. Johnson, J. Lindburg, D. Johnson, S. Schukei, M. L’Heureux, R. Reimers, E. Lippold, B. Kreikmeier, J. Jensen, J. Francke, R. Musil, M. Reynolds, T. Scott, J. Buelt and C. Whitbeck shall now each be compensated ‘... one hundred twenty eight (128) straight time hours and sixty four (64) overtime hours 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.

In June 2014, unprecedented thunderstorms and rainfall in the Missouri River basin resulted in severe flooding throughout the region.<sup>1</sup> BNSF's equipment and operations were adversely affected, and Carrier forces were fully engaged in mitigating the impact of this natural disaster and making the necessary repairs to resume operations. In particular for this claim, BNSF's bridge at Mile Post 15.02 on the O'Neill Sub-division in northern Nebraska was washed out, and the entire line (about 113 miles of track) was taken out of service.

The Carrier contracted with outside forces to rebuild the bridge (and related work) at Mile Post 15.02; they worked from mid-June through July 3, 2014. The Organization filed this claim, alleging that the Carrier (1) failed to provide proper notice under the Note to Rule 55 of its intent to subcontract routine Maintenance of Way work and (2) the work did not meet the requirements set forth in Rule 55 for contracting out work reserved to MoW forces under the Agreement. According to the Organization, the evidence it submitted into the record—statements from the Claimants—established that there was no emergency involved: the line had only one train per day. In addition, Carrier forces were required to lend their tools to the contractors for them to effect the repairs, which MoW forces could have done (and have performed in the past). According to the Organization, it made a *prima facie* case, which the Carrier failed to rebut.

The Note to Rule 55 includes special language pertaining to emergencies:

By agreement between the Company and the General Chairman, work as described in the preceding paragraph which is customarily performed by employes described herein, may be let to contractors and be performed by contractors' forces. However, such work may only be contracted provided that skills not possessed by the Company's

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<sup>1</sup> On July 24, 2014, President Obama declared a national disaster for Nebraska.

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 the event the Company plans to contract out work because of one of the criteria described herein, it shall notify the General Chairman of the Organization 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, *except in "emergency time requirements" cases....* (Emphasis added.)

The Organization contends that the circumstances surrounding the rebuilding of the bridge at Mile Post 15.02 did not present an emergency. Its position is not persuasive. The record includes an e-mail dated July 19, 2014, from the Carrier's Manager of Engineering Systems with the subject line "Omaha Subdivision Flood Watch." The e-mail states that "The National Weather Service is now forecasting the Big Sioux River in Sioux City to experience major flood stage by Saturday. Flood stage in Sioux City is 99 feet and the Big Sioux is forecast to reach 109.8 at 1:00 p.m. Saturday.... This is a very dynamic situation..." More importantly, the e-mail listed six Sub-divisions that were already out of service, including the O'Neill Sub. One Sub-division had already been returned to service. The flooding was serious enough to close Interstate Highway 92 between exits 9 and 2. A map attached to the e-mail graphically illustrated the extent of the damage caused by the flooding.

Had the flooding affected only the one bridge, the Organization's position might have carried more weight. But the evidence in the record is that the flooding, and the damage it caused, impacted the Carrier's operations across a broad swath of its territory in the state of Nebraska, and did so relatively simultaneously. Such a multitude of problems interrupting operations surely constitutes an emergency, by any definition. As the Manager of Engineering Systems noted in his e-mail, the situation was "dynamic"—meaning that the situation on the ground could change at any time, depending on the weather. Under such circumstances, management needs flexibility to make decisions about what work should be performed when, where, and by whom. That is what the emergency exceptions to notice and contracting are all about. The record here establishes that there was an emergency on the O'Neill Sub-division (and throughout the region generally) in June and early July 2014. Accordingly, the Carrier did not violate the Agreement when it hired an outside contractor to effect repairs to the bridge at Mile Post 15.02 that had been washed out by flooding

associated with torrential rains that led to a national disaster declaration for the state of 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.