

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44414
Docket No. MW-43356
21-3-NRAB-00003-200394**

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 (Huls Bros Trucking) to perform Maintenance of Way and Structures work (haul and unload ballast) for a shoe fly project at Central Avenue near Mile Post 10 on the St. Paul Subdivision, Twin Cities Division on June 30 and July 1, 2 and 3, 2014 (System File T-D-4491-M/11-15-0002 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 said 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 R. Gulbranson, T. Neve, R. Hillesheim, R. Pawlu, Jr., R. Heltzer, M. Brisbois, J. Kramer, J. Derungs, D. Polansky, T. Lom and B. Johnson shall now each be compensated for forty-eight (48) hours at their respective overtime rates 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.

The Organization filed this claim contending that the Carrier violated the parties' Agreement when it subcontracted Maintenance of Way work (hauling and unloading ballast) on June 30 and July 1, 2, and 3, 2014, at Central Avenue near Mile Post 10 on the St. Paul Sub-division. The Carrier defended on the basis that the work did not occur on BNSF property, nor was it contracted by BNSF. Rather, the Minnesota Department of Transportation (MNDOT) was rebuilding one of its bridges, which is utilized by BNSF but not owned by the Carrier. The disputed work of hauling ballast was contracted for by MNDOT and was stockpiled on city property, not BNSF property. The Organization challenged the Carrier's position by submitting invoices for ballast that the Carrier ordered from Huls Bros Trucking.

The only work that can be subject to the contracting rules in the parties' Agreement is work that is within the scope of the Agreement. While the record includes the invoices for ballast submitted by the Organization, the record also includes an email statement from Brian Sampson, a Project Engineer for the Twin Cities Division, dated October 17, 2014. In response to questions about the Claim, Sampson wrote:

MNDOT is rebuilding the railroad bridge that we BNSF utilize and MNDOT owns.

Claim says this ballast was taken to Central Avenue near MP 10 for the Shoefly Project on the St Paul Sub. Is this the MNDOT project? Yes....

Was the ballast used or stockpiled at Central Avenue? The ballast was used and some of the extra ballast is stockpiled off BNSF's ROW to use for the realignment of the shoefly.

There is no further information in the record from the Organization to refute the fact that the bridge is owned by MNDOT or that MNDOT, not BNSF, contracted for the ballast to be delivered. Nor does the evidence establish that the ballast was stored on BNSF property; Sampson explicitly states that it was stockpiled “*off BNSF’s ROW—right of way.*” On the basis of the record before the Board, then, the Organization has failed to present evidence sufficient to establish customary performance of the disputed work. Indeed, it appears that the disputed work falls outside the scope of the parties’ Agreement, and the Carrier did not violate the Agreement when the owner of the property, MNDOT, arranged with contractors to haul ballast to its property.

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.