

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44415
Docket No. MW-43380
21-3-NRAB-00003-200395**

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 (Ames Construction) to perform Maintenance of Way and Structures Department work (building a bridge) at Mile Post 4.42 on the Powder River Division, Front Range Sub-Division between Denver and Westminster, Colorado beginning on August 25, 2014 and continuing (System File C-15-C100-13/10-15-0036 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, Claimants H. Zogg, J. Herman, J. Loza, M. Norris, W. Holgrove, J. Willey and C. Wischusen shall now be compensated as follows:**

“... the B&B Foreman and his crew be paid (104) hours of Straight Time and (44) hours of overtime, and the Group 2 Machine Operators be paid (80) Hours of Straight Time and (38) Hours of Overtime as they were not claimed on 9/5/14, 9/9/14, and 9/10/14 as they were listed on another claim, and the Roadway Equipment Operators be paid (16) Hours of Straight Time and (4) Hours of Overtime at their respective rates of pay as settlement of this claim. THIS IS AN ONGOING CLAIM WITH MORE HOURS TO COME.’ (Emphasis in original).”

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.

On July 21, 2014, the Carrier sent notice to the Organization that it would be contracting out certain work in conjunction with flooding on various sub-divisions throughout the Powder River and Nebraska Divisions:

As you are aware, BNSF is experiencing major service interruptions due to recent flooding caused by the recent heavy rainfall and storms on various sub-divisions throughout the Powder River and Nebraska Divisions. BNSF is not adequately equipped with the necessary equipment to handle this magnitude of outages to meet the needs of its customers and maintain the current projects already underway. Insomuch, some project timelines are being pushed back to attend to the stabilization of track and bridges, removal and management of storm debris, as well as construction of new assets to mediate further flooding.... Due to the emergency nature of this work, the contractors will begin immediately if not already underway. BNSF forces are

currently on hand performing as much work as possible to maintain the integrity of these locations....

The Carrier sent a further notice to the Organization dated August 21, 2014, in which it addressed specifically the bridge at Mile Post 4.42 on the Front Range Sub-division:

... BNSF advised by letter dated July 21, 2014, of BNSF's need to address multiple embankment, stability, and drainage issues with various track and bridge milepost locations across the Nebraska and Powder River Divisions. That letter also addressed that some project timelines are being pushed back to address stabilization issues arising from recent heavy rainfall in certain locations. One such project being adjusted is located at approximately MP 4.42 on the Front Range Sub-division. Denver's rapid area transit (RTD) has built a new bridge upstream from BNSF's existing bridge. This new bridge has changed the drainage channel and increased the water flow downstream causing scour and embankment instability around the existing bridge piles and abutments. There, BNSF plans to contact for the turn-key installation of a new bridge that is 100% funded by RTD, and if not for RTD's own bridge installation, BNSF would not be undertaking this project....

The Board has long recognized that emergencies are exempt from the constraints imposed on subcontracting by the Note to Rule 55 in the parties' Agreement. The record here establishes that heavy rainfall on the Powder River and Nebraska Divisions in the spring and early summer of 2014 had caused flooding that constituted an emergency within the meaning of Rule 55: there were service interruptions, bridges and tracks needed to be stabilized in order to be safely returned to operation, and storm debris needed to be removed for operations to continue safely. The Carrier issued its first Notice on July 21, 2014. By mid-August, the emergency continued, and the Carrier issued a supplemental notice dated August 21, 2014, addressing explicitly the bridge at MP 4.42, and explaining that the new bridge constructed by RTD, had undermined the safety of BNSF's bridge at MP 4.42 due to increased water flow, which in conjunction with the flooding, caused scouring and embankment instability. The record is sufficient to establish that the Carrier acted properly within the emergency exception to Rule 55 when it contracted for construction of a new bridge at MP 4.42. Accordingly, the Claim is denied.

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.