

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44416  
Docket No. MW-43382  
21-3-NRAB-00003-200396**

**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&R Contracting) to perform Maintenance of Way and Structures Department work (unloading turnout packages and ribbon rail) at Mile Post 00.9 to Mile Post 1.9 on the Circle Subdivision, Montana Division on August 1, 2 and 3, 2014 (System File B-M-2768-E/11-15-0054 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 K. Mitchel, D. Petroff, J. Zacher and J. Dietz shall now ‘... each receive five and a half (5 ½) hours of regular time and seventeen (17) hours of overtime, 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.

The Organization filed this claim after a contractor, R&R Contracting, unloaded two turnout packages and six strings of ribbon rail at MP 0.9 to MP1.9 on the Circle Sub-division.

By letter dated April 10, 2014, the Carrier notified the Organization of its intention to contract certain work between MP 0.0 and MP 3.0 on the Circle Sub-division:

As information, BNSF plans to contract for additional dirt and track work on the new industry lead line between MP 0.0 and MP 3.0 on the Circle Sub-division. Thatcher Chemical is constructing a new siding with additional lead tracks to service multiple customers. BNSF is not adequately equipped for projects of this magnitude which require both specialized equipment not possessed by BNSF and special skills not possessed by BNSF employees.... It is anticipated that this project will begin on approximately April 28, 2014, and planned to be complete by December 31, 2014, weather permitting.

The Note to Rule 55 permits contracting under certain circumstances, specifically when “special skills not possessed by the Company’s employees, special equipment not owned by the Company... 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.”

The Board has recognized the Carrier's right to contract out large "capacity" projects. (*See, e.g.*, Third Division Awards 41223, 41222, 37434, and 38383.) Moreover, the Board has consistently held that the Carrier does not have an obligation to piecemeal small portions of large projects that are otherwise properly contracted out.

The record before the Board is sufficient to conclude that the work described in the Carrier's April 10, 2014 notice to the Organization was part of a large capacity expansion project and met the requirements of special equipment not owned by the Carrier and special skills not possessed by BNSF employees. Nor was the Carrier obligated to piecemeal any part of the larger project. Accordingly, the Carrier did not violate the parties' Agreement when it contracted the specific work disputed in this Claim.

**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.