

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44417
Docket No. MW-43383
21-3-NRAB-00003-200397**

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 Department work (load and haul ties) from stock piles in the middle of Gavin Yard near Minot, North Dakota on the KO Subdivision to Northgate, North Dakota on the Niobe Subdivision on August 2, 2014 (System File T-D-4490- E/11-15-0050 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. Brandt, L. Aichele, J. Simkins, L. Viall and T. Kesler shall now each ‘*** receive fourteen (14) hours as worked by the contractor, with pay to be at their 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, RJ Corman, loaded and hauled ties from stockpiles in the middle of Gavin Yard to Northgate, North Dakota, on the Niobe Sub-division on August 2, 2014.

By letter dated August 29, 2013, the Carrier notified the Organization of its intention to contract certain work related to construction and improvements to the Northgate lead track on the Niobe Sub-division:

As information, BNSF plans to construct and improve the Northgate lead track/siding to a new industry customer near MP 19.0 and 21.5 at the Canadian border on the Niobe Sub-Division. There, BNSF will contract for the necessary dirt work and heavy equipment with operators associated with building the siding/industry lead. BNSF is not adequately equipped with the necessary specialized equipment, such as scrapers, graders, rollers, compactors, dozers, loaders, blades, off-track cranes, as well as front-end loaders, dump trucks, water trucks, and track-hoes (excavators) necessary to perform this volume of dirt work. Moreover, BNSF forces do not possess the necessary specialized dirt work skills for projects of this type....

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 August 29, 2013 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.