

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44419
Docket No. MW-43418
21-3-NRAB-00003-200399**

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 (Lakeside Construction) to perform Maintenance of Way and Structures Department work (widen access road) at the East siding switch at Mile Post 98.152 near Juanita, North Dakota on the KO Subdivision on August 1, 4, 5, 6, 7, 8, 11, 12, 13 and 14, 2014 (System File T-D-4504-E/11-15- 0061 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 J. Frank, B. Kline, K. Swart, L. Thompson, S. Roy, P. Peichel, J. Kraft and D. Dahm shall now each be compensated for ‘*** an equal share of five hundred fifty three (553) hours straight time and one hundred fifty three (153) hours overtime worked by the contract employees, with pay to**

be at their respective 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.

This case arose on August 14, 2014, when the Carrier used an outside contractor (Lakeside Construction) to widen the access road at the East siding switch Juanita, North Dakota, MP 98.152 on the KO Sub-division, Twin Cities Division.

The Organization contends that the work in dispute—widening and grading a Carrier right-of-way access road—is work that is within the scope of the parties’ Agreement and is customarily performed by Maintenance of Way employees. The Carrier responds that such work has not been traditionally and historically performed by MoW forces and that it is not within the scope of the Agreement.

After a thorough review of the record in this case, the Board concluded that the evidence is insufficient to conclude that MoW forces have worked on access roads in the past. They may have done so, but the evidence before the Board does not establish that fact. Absent a finding that the work in dispute has been customarily, traditionally and historically been performed by MoW forces, the claim is denied.

AWARD

Claim denied.

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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.