

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44505
Docket No. 45846
21-3-NRAB-00003-200193**

The Third Division consisted of the regular members and in addition Referee Barbara C. Deinhardt when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces to perform Maintenance of Way and Structures Department work (move and set portable office units, demolish old office units and remodel existing office buildings) at Beech Grove Maintenance Facility in Beech Grove, Indiana beginning August 21 through September 25, 2018 (Carrier’s File BMWE-153779-TC NRP).**
- (2) The Agreement was further violated when the Carrier failed to give the General Chairman advance written notice of its plans to contract out said work or make a good-faith attempt to reach an understanding concerning said contracting as required by Rule 24.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants C. Douglas, T. Shipley, B. Gross, L. Scott, J. Joeza, A. Bean, C. Shorter and J. Chenoweth shall now ‘... be compensated for all straight and overtime hours worked by contractor Verkler and the six (6) sub-contractors beginning August 21, 2018 thru and including September 25, 2018 to be divided equally and proportionally among Claimants at their respective straight and 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 Carrier had an outside company set up and tear down modular/prefabricated offices in the Material Control Department at Beech Grove Maintenance Facility in 2018. It did not provide any notice to the Organization of the proposed contracting out.

The Organization argues that the Carrier violated the Scope of Work provision of the Agreement when it subcontracted out the work of moving and setting up portable office units, demolishing old office units and remodeling existing office buildings. This is work generally recognized as Maintenance of Way work ordinarily performed by the Organization. Further, it is undisputed that the Carrier did not give requisite notice to the General Chairman about its intent and did not hold a conference.

The Carrier asserts that the work in question was beyond the scope of the Agreement. The employees listed in the referenced claim are Mechanical Department BMW employees. The work described in the grievance was a capital project that was originated through Operations and not through the Mechanical Department. The work was to locate prefab offices and remodel offices utilized by Operations personnel only. The Organization failed to provide any evidence of when these BMW Mechanical Department employees have allegedly "ordinarily and traditionally" performed this work. The Amtrak - BMW Off-Corridor Agreement only requires a notice when work is contracted within the Scope of the agreement. This work has not traditionally been performed by these employees over this territory, and/or for the Operations Department, and therefore, in accordance with Rule 1, is not considered scope work. Further, the Carrier argues that the Claimants did not suffer any loss of work as they were all fully employed during the claim period.

Upon a review of the record, the Board finds that the Organization has not proved that the claimed work has been ordinarily and traditionally performed by BMW employees.

We find that the Organization has not met its burden of proving that the Carrier violated the Agreement.

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 29th day of July 2021.