

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44563
Docket No. MW-46312
22-3-NRAB-00003-210047**

The Third Division consisted of the regular members and in addition Referee I. B. Helburn 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:

- “(1) The Carrier violated the Agreement when it allowed outside forces (H.L. Ruberton) to perform Maintenance of Way work (grade crossing repair and maintenance) at or near Mile Post 57.7 at Amtrak’s Perryville Yard in Perryville, Maryland beginning May 20, 2019 and continuing (System File BMWE-156743-TC AMT).**
- (2) The Agreement was further violated when the Carrier failed to comply with advance notification and conference provisions in connection with the Carrier’s intent to contract out subject work.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the Claimants, generally identified as assigned to Gangs A-250, A-255, A-260 and A- 267, shall now receive an equal proportionate share for all hours expended on the project by the outside contractor payable at the Claimants’ 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.

As reflected in their respective positions, the parties disagree on the precise contracted-out work at issue in this case. The Organization characterizes the disputed work as “grade crossing repair and maintenance,” while the Carrier identifies the disputed work as finishing “the grade crossing with hot asphalt” after it had been built by BMW-represented employees. The Organization filed a timely claim on behalf of members of the above-noted gangs. The claim was properly processed on the property without resolution and thereafter progressed to this Board for final and binding adjudication.

The Organization avers that Rule 1-Scope was violated when, without giving the required notice, the Carrier used a contractor to remove and install existing crossings, thereby performing Maintenance of Way work that was neither a major project nor work of an emergency nature. The Organization did not have to provide the names of specific Claimants. Days and hours that the contractor worked were set forth in the claim and contractor employees were properly identified. The Carrier’s exclusivity argument is irrelevant as the work historically has been performed by Maintenance of Way employees. The contractor used equipment of the same type owned by Amtrak and the Carrier has not identified equipment or skilled manpower that it was lacking.

The Carrier asserted in its submission, but not on the property, that this Board does not have jurisdiction over this contracting-out claim because Paragraph D of the Scope Rule allows either party to refer such claims to a Special Board of Adjustment. That aside, the Scope Rule was not violated because hot asphalt work, which is what the contractor’s employees did after Maintenance of Way employees built the crossing, historically has been contracted out. The Carrier owns a vibrating roller but not a steam asphalt roller that was used for this project. The current Pavers roster does not apply to hot asphalt work. Because hot asphalt work of the magnitude of this project has not been done by Maintenance of Way employees, no advance notice was required. Moreover, the claim is defective because it was filed on behalf of maintenance gangs although production gangs built the crossing.

The relevant portions of Rule 1-Scope are set forth below.

While it is not the intent of the parties to either diminish or enlarge the work being performed in a territory under this agreement, the work generally recognized as work ordinarily performed by the Brotherhood of Maintenance of Way Employees as it has been performed traditionally in the past in that territory will continue to be performed by those employees.

Included among work that “may not be contracted out without the written concurrence, except in cases of emergency, of the appropriate General Chairman,” is “Track inspection, maintenance, construction or repair from four (4) inches below the base of the tie-up, and undercutting.”

Paragraph D states that “Any question with regard to contracting out work in accordance with the scope of this Agreement may be referred by either party to a Special Board of Adjustment created specifically and solely to hear and render decisions upon such questions. The Special Board of Adjustment shall operate in accordance with the Agreement appended hereto as Attachment ‘A’.”

Side Letter #2 of the Agreement states in relevant part that “. . . Amtrak intends to use the BMWF represented employees to perform work beyond that which is reserved to them in Items A.1.a (1), (2), and (3). However, such use does not create obligations or rights to work which do not exist in the current Agreement.

At the hearing, the Board was told that the Organization had made a decision to withdraw the claim. Therefore, the Board does not need to respond to the parties’ contentions.

AWARD

Claim dismissed.

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 8th day of October 2021.