

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44565  
Docket No. MW-46424  
22-3-NRAB-00003-210199**

**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:**

**“Claim of the System Brotherhood that:**

- (1) The Agreement was violated when the Carrier assigned outside forces (J&T Trucking) to perform Maintenance of Way and Structures Department work hauling a Carrier owned excavator from Chelsea, Michigan to Porter, Indiana on the Michigan Seniority District, Central Division on July 25, 2019 (System File D-1924AOC-241/BMWE-157219-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 (2) above, Claimant J. Knapp shall now ‘... be compensated for all straight time and overtime hours, worked by J&T Trucking on July 25, 2019 at Claimants (sic) applicable straight and overtime rates of pay. However, no less than eight (8) hours 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 Claimant has established and holds seniority in the Carrier's Maintenance of Way Department. The Carrier contracted with J&T Trucking to haul a Carrier-owned Excavator from Chelsea, MI to Porter, IN on July 25, 2019. Thereafter the Organization filed a timely claim on J. Knapp's behalf. The claim was properly processed on the property without resolution and progressed to this Board for final and binding adjudication.

The Organization contends that Rules 1, 5, 8, 11 and 24 were violated by the contracting out without prior notice of work "customarily and historically" performed by Maintenance of Way employees. The Claimant has a CDL and has hauled this Excavator in the past. His availability on July 25, 2019 is irrelevant, as the Carrier could have assigned the work to him. The Carrier owns the necessary tractor and trailer and the Claimant has hauled equipment in Indiana. The Carrier has not documented the assertion that Indiana regulations would not have permitted the Claimant to haul across state lines.

The Carrier replies that it did not violate the Scope and Contracting Out Rules because the work has been contracted out in the past as Amtrak does not have a permit to haul equipment from Michigan to Indiana. The work has been contracted for safety reasons and when its tractor and trailer were in the shop. The Claimant's CDL is irrelevant. His statement does not indicate that he has hauled across state lines. The work was not Scope covered, thus the Rule 24 notice requirement is inapplicable. Rule 11 -- Overtime was not violated because the Claimant did not belong to a gang that was entitled to the work had it been assigned to a Carrier employee. The Organization has not shown a violation of Rules 5 or 8. Finally, Mr. Knapp is an improper Claimant because his work on July 25, 2019, including overtime, made him unavailable and because he would not have received the assignment had he been available.

**Rule 1 -- Scope states in relevant part:**

**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.**

**Rule 24 provides in relevant part: “1. In the event the Carrier plans to contract out work within the scope of the schedule agreement, the Chief Engineer shall 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 15 days prior thereto.”**

**Rule 11 -- Overtime, at Section 4 states as follows:**

- (a) Preference to overtime work on a regular day which precedes or follows and is continuous with a regular assignment shall be to the senior available qualified employee of the gang or the employee assigned that work.**
- (b) Preference to overtime work other than in (a.) above, shall be to the senior available qualified employee at the headquarters who ordinarily and customarily performs such work.**

**Rule 1-Scope reserves to the Organization “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 . . .” The Organization, with the burden of proof, must provide persuasive evidence to support the assertion that hauling across the Michigan-Indiana state line “customarily and historically” has been performed by the Claimant or other qualified Maintenance of Way employees such that the work falls within the Scope Rule. The sole piece of supporting evidence submitted by the Organization is a written statement asserting in relevant part that “I, Jordan Knapp, hold a Class A CDL Interstate and have in the past always hauled and mobilized the Excavator.” The Board does not doubt the truth of the statement, but finds that it does not establish that the Claimant has hauled the Excavator or any other machinery across the Michigan-Indiana state line. Therefore, the Organization has failed to meet the burden of proving that the Carrier contracted Scope-protected work. Rule 24 notification was not required.**

**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 8th day of October 2021.