

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44579  
Docket No. MW-43994  
22-3-NRAB-00003-200830**

**The Third Division consisted of the regular members and in addition Referee James M. Darby when award was rendered.**

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

**PARTIES TO DISPUTE: (  
(BNSF Railway Company**

**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 work (repair section of concrete on top of a pier on a bridge) at Mile Post 18.9 on the River Subdivision on February 23, 24, 25, 26 and 27, 2015 (System File 745-FR99-1513/12-15-0105 SLF).**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with advance written notice of its intent to contract out said work or to make a good-faith effort to reduce the incidence of subcontracting and increase the use of its Maintenance of Way forces as required by Rule 99 and the December 11, 1981 Letter of Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants J. Laster, C. Evans, G. Boylan, J. Blackburn and M. Ashley shall now ‘... be paid 40 hours straight time worked on this task at their respective rates of pay as settlement of this Claim.’”**

**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.

On February 25, 2015, the Bridge Inspector that routinely inspects the bridge at mile point 18.9 on the River Subdivision found significant defects on the bridge making it unsafe for trains. That Bridge Inspector immediately took the bridge out of service and repairs commenced that very same day. These repairs consisted of the installation of a temporary pony bent to support the bridge structure so that specialized polymer material could be applied to restore the bridge to service. The bridge remained out of service until these repairs were completed on February 27, 2015. Thereafter, on April 20, 2015, the Organization filed this instant claim alleging that BNSF violated the Agreement when it did not issue a 15-day advance notice of intent to contract as outlined in Rule 99 before assigning a contractor—E80—to affect repairs to the bridge by applying specialized polymer (epoxy) material. BNSF denied the Organization's claim because this was an emergency requiring immediate remediation in order to return the bridge to service as quickly as possible.

Arbitral precedent has consistently ruled that in emergencies a carrier has greater latitude in the assignment of whatever forces it deems necessary, including contractors, to eliminate as quickly as possible conditions adversely affecting the movement of freight. Additionally, an emergency continues until unrestricted service is restored. As set forth above, the record shows in no uncertain terms that an emergency existed due to the Bridge Inspector's determination that the bridge in question was not safe to traverse due to the failure of the concrete substructure. Under these circumstances the Carrier was not required to provide the notice as alleged by the Organization.

Furthermore, in addition to failing to show the absence of an emergency, the Organization has also failed to establish that the epoxy injection process at issue here has been customarily performed by Organization members on this property. To the contrary, the record shows such work has been historically performed by contractors to the exclusion of Carrier employees.

Accordingly, for all these reasons the claim is denied.

**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 29<sup>th</sup> day of October 2021.