

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44580
Docket No. MW-44061
22-3-NRAB-00003-200828**

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 (Midwest Railroad) to perform Maintenance of Way work (place asphalt) at the Lindenwood Yard near Mile Post 6.8 in St. Louis, Missouri on January 13, 2015 (System File 2600-FR99-1510/12-15-0069 SLF).**
- (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 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 National Letter of Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants C. Aaron, W. Johnson, D. Schnarr, L. Castens and B. Whelton shall now be allowed an equal and proportionate share of all straight time and overtime hours worked by the outside forces in the performance of the claimed work.”**

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 dispute arose when BNSF contracted Midwest Railroad to perform hot-mix asphalt paving of crossing approaches at MP 6.8 in BNSF's Lindenwood Yard located in St. Louis, Missouri on January 13, 2015. Contrary to the Organization's assertion that BNSF failed to provide the requisite 15-day advance notice of its intent to contract out this hot-mix asphalt paving work, the record shows that *Engineering System Notice 01-15-Asphalt at Grade Crossings* was sent to the four BMWED General Chairpersons on December 19, 2014. Notice 01-15 stated in pertinent part:

As information the Carrier plans to continue the ongoing program of placing asphalt at grade crossings to restore the running surface of the roadway approaching the tracks. As in the past this work will be accomplished by outside forces that are properly equipped to handle the placement and rolling of the asphalt. A tentative schedule is forthcoming at a later date of the work locations where asphalt work is expected to occur in 2015. Obviously, this list is subject to change as the work season progresses.

While Engineering System Notice 01-15 stated the "tentative schedule" would be forthcoming, it was actually attached to the Notice at the time of mailing. Furthermore, contrary the Organization's position, this Notice fully complied with Rule 99(a).

Finally, while the Organization asserts that hot-mix asphalt paving has historically and is still being performed to this date on the Springfield Division using

carrier forces with owned or leased equipment, it failed to provide any evidence of the work being performed on the Springfield Division, currently or any historical performance. Thus, there is no showing on this record that Maintenance of Way employees have ever performed the disputed work of asphalt paving. BNSF detailed its historical practice of contracting out asphalt paving on pages 3 through 21 of its July 19, 2015 letter declining the Organization's appeal.

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 29th day of October 2021.