

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44596  
Docket No. MW-45321  
22-3-NRAB-00003-180492**

**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 (snow removal, road grading and spreading salt) on various roadways on Carrier property at or near Kansas Avenue in Kansas City, Kansas on December 16 and 17, 2016 (System File 2418-SLA8-178/14-17-0109 BNS).**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with advance notification, in writing, of its intent to contract out the work referred to in Part (1) above or make a good-faith effort to reduce the incidence of subcontracting and increase the use of its Maintenance of Way forces as required by Appendix 8 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 J. Black and T. Toot shall now each be compensated for twenty-four (24) hours at their 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.

The record shows that BNSF contracted with Kaw Valley Industries ("KVI") to remove snow, grade roadways, and spread salt/deicer on various roadways and parking lots within the Argentine Terminal Complex in Kansas City, Kansas on December 16 and 17, 2016. However, the Carrier contends that the only work Kaw Valley performed was the spreading of salt and sand on roadways. It is undisputed that BNSF does not own the type of equipment KVI used to salt/sand roadways. The Organization asserts that KVI also performed snow removal and road grading jobs. It also contends that its members had the exclusive right to perform this work and that the Carrier violated Appendix 8 by not providing the required 15-day notice.

The claim must be denied. The instant record fails to satisfactorily establish what exact work was being performed by KVI on the days in question. This Board has held on numerous occasions that where there exists a factual dispute over an essential element of a claim, the Board must either dismiss the case or rule against the moving party. Here, the Organization has the burden of establishing the facts necessary to support its claim of an Agreement violation. It has not met its burden in this case.

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.