

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44597
Docket No. MW-45322
22-3-NRAB-00003-180519**

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 (installation of fencing) around the perimeter of Carrier’s property at the Victorville Yard in Victorville, California beginning on January 4, 2017 through January 20, 2017 (System File 2419-SLA8-1713/14-17-0124 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 P. Hansen, F. Rodriguez, J. Ponce, J. Winter, J. Rush and D. Guerrero shall now each be compensated for ‘... one-hundred forty(140) (sic) hours each and all continuing hours that are being worked by the contractors, at their respective rates of pay. Please advise of the pay period when said payment will be made.’”**

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 beginning on January 4, 2017 through January 20, 2017, the Carrier hired outside contractors to install fencing around the perimeter of the Carrier's property at the Victorville Yard in Victorville, California. The Organization maintains that this is work that is customarily performed by Maintenance of Way forces and the Carrier violated the Agreement when it assigned the work to outside contractors. It contends that the Carrier compounded that violation when it failed to notify the General Chairman, in advance, of its plans to contract out this work and failed to allow the Organization the opportunity to discuss the plans to contract out this work. As a remedy the Organization requests that Claimants be compensated an equal and proportionate share all the hours worked by such contracted employees in performance of this work.

In March 1989 this Board decided on-property *Third Division Award 27731* (Dennis) which held as follows:

This Board is again confronted with a case involving subcontracting of work that Carrier's maintenance of way forces could most likely perform and have performed many times. In spite of this fact, however, Carrier is not barred from subcontracting the fencing work in question. While maintenance of way forces have certainly built many fences on Carrier property, the general Scope Rule contained in the agreement does not specifically name fence building as work reserved to such forces. In fact, Carrier presented a long list of projects where fences were built by outside contractors.

As established on the record, fencing is work that is routinely performed by outside contractors on this property and has been for at least 113 years. Thus, based on the clear language of Appendix 8 and past arbitrations, BNSF had every right to contract for fencing, as it is an existing right. To hold otherwise would conflict with the consistent long-standing precedent on this property.

Accordingly, for 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.