

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45001
Docket No. MW-43052
Old NRAB-00003-150247
New 23-3-NRAB-00003-220931**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

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

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned outside forces (Hulcher, Inc.) to perform Maintenance of Way and Structures Department work (remove and install track panels and associated work) near Mile Posts 203 and 204 on the Worthington Subdivision on December 31, 2013 and January 1, 2014 (System File B-140C-121/1600561 CNW).

(2) The Agreement was further violated when failed to properly 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 regarding the aforesaid work or make a good-faith effort to reduce incidence of subcontracting and increase the use of its Maintenance of Way forces as required by Rule 1 and Appendix '15'.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants S. Johnson and Campbell shall each '* be compensated for, an equal share of all hours of the lost work opportunity, reportedly thirty two (32) hours of overtime and thirty (30) hours of double time, at the applicable 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.

Factual Background:

On December 31, 2013 and January 1, 2014, the Carrier assigned outside forces (Hulcher, Inc.) to remove and install track panels and other related work near Mile Posts 203 and 204 on the Worthington Subdivision. Insofar as the Organization considered this work to fall within the scope of work delegated to maintenance of way forces, it protested the outsourcing as a breach of the parties' collective bargaining agreement. Rule 1(B) of that Agreement provides as follows in pertinent part:

RULE 1 - SCOPE

- A. The rules contained herein shall govern the hours of service, working conditions and rates of pay of all employees in any and all subdepartments of the Maintenance of Way and Structures Department, (formerly covered by separate agreements with the C&NW, CStPM&O, CGW, Ft.DDM&S, DM&CI, and MI) represented by the Brotherhood of Maintenance of Way Employees.
- B. Employees included within the scope of this Agreement in the Maintenance of Way and Structures Department shall perform all work in connection with the construction, maintenance, repair and dismantling of tracks, structures and other facilities used in the operation of the Company in the performance of common Carrier service on the operating property. This paragraph does not pertain to the abandonment of lines authorized by the Interstate Commerce Commission.

By agreement between the Company and the General Chairman, work as described in the preceding paragraph, which is customarily

performed by employees described herein, may be let to contractors and be performed by contractors. However, such work may only be contracted provided that special skills not possessed by the Company's employees, special equipment not owned by the Company, or special material available only when applied or installed through supplier, are required; or unless work is such that the Company is not adequately equipped to handle the work; or time requirements must be met which are beyond the capabilities of Company forces to meet.

In the event the Company plans to contract out work because of one of the criteria described herein, it shall notify the General Chairman of the Brotherhood 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, except in 'emergency time requirements' cases. If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the Company shall promptly meet with him for that purpose. The Company and the Brotherhood representatives shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached, the Company may nevertheless proceed with said contracting and the Brotherhood may file and progress claims in connection therewith. (See Appendix '15')

Nothing contained herein shall be construed as restricting the right of the Company to have work customarily performed by employees included within the scope of this Agreement performed by contract in emergencies that affect the movement of traffic when additional force or equipment is required to clear up such emergency condition in the shortest time possible. * * *

Appendix 15 (the December 11, 1981 Letter of Agreement) states as follows in pertinent part:

Dear Mr. Berge: * * *

The carriers assure you that they will assert good-faith efforts to reduce the incidence of subcontracting and increase the use of their maintenance of way forces to the extent practicable, including the procurement of rental equipment and operation thereof by carrier employees.

The parties jointly reaffirm the intent of Article IV of the May 17, 1968 Agreement that advance notice requirements be strictly adhered to and encourage the parties locally to take advantage of the good faith discussions provided for to reconcile any differences. In the interests of improving communications between the parties on subcontracting, the advance notices shall identify the work to be contracted and the reasons therefor. * * *

Please indicate your concurrence by affixing your signature in the space provided below.

Very truly yours,

/s/ Charles I. Hopkins, Jr.
Charles I. Hopkins, Jr.

I concur:
/s/ O. M. Berge

By Notice dated November 12, 2013 stated as follows:

This is to advise you of the Carrier's intent to contract the following work:

PLACE: At various locations on the Twin Cities Service Unit.

SPECIFIC WORK: Providing any and all fully operated, fueled and maintained and or non operated [sic] equipment necessary to assist with program work, emergency work, and routine maintenance commencing November 12, 2013 through and including December 31, 2014.

Position of Organization:

On the dates in question, two contract employees used ordinary maintenance of way equipment such as crawler hoes to perform construction, maintenance repair and dismantling work including removal and installation of track panels and related work. In the Organization's view, this is quintessential Maintenance of Way and Structures Department work customarily performed by Maintenance of Way forces, as such, the work cannot be outsourced without proper notice. It points out that the

Notice in question specified neither the work to be performed or the reason why it was being outsourced. If the Board reaches the merits, the Organization argues the Carrier has met no exception.

Position of Carrier:

The Carrier explains it utilized outside forces to assist Carrier forces when Union Pacific train MCBVP-30 derailed 23 cars on the Carrier's mainline on December 31, 2013 near MP 203 and 204. Carrier operations were completely halted on the Worthington Subdivision because this track is a single mainline. The impact of the derailment was that no train traffic was able to run on the Worthington Subdivision for thirty-six hours, and afterwards traffic was slow. During this track outage the Carrier had to reroute trains which caused significant delays. It is the Carrier's position that it was "not adequately equipped to handle the work" and/or that the "time requirements" which had to be met were "beyond the capabilities of Company forces to meet." The Carrier did not possess the quantity of equipment in that location that was needed to resolve the derailment incident.

Analysis:

The contractual notification requirement is inapplicable in emergency time requirements. The Board is persuaded that the Carrier has provided ample evidence that there was a derailment on the dates in question. It follows that unexpected needs needed to be addressed immediately. We find the Carrier was well within its rights to include contract workers in addressing this emergency situation.

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 28th day of June 2023.