

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45007
Docket No. MW-46154
23-3-NRAB-00003-200298**

The Third Division consisted of the regular members and in addition Referee Jeanne Charles when award was rendered.

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

PARTIES TO DISPUTE: (

(Indiana Harbor Belt 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 (Beverly Asphalt) to perform Maintenance of Way Department work (asphalting road crossings) at Sohl Street, Mile Post 5, Track 1 in Hammond, Indiana on the East Seniority District (System File 2018-018 IHB).**
- (2) The Agreement was further violated when the Carrier failed to notify the General Chairman of its intent to contract out the work referred to in Part (1) above and when it failed to make a good-faith effort to reduce the incidence of contracting out scope covered work and increase the use of its Maintenance of Way forces as required by the Scope Rule 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 S. Gengnagel, J. Tuttle and A. Soto shall now**

each ‘... be compensated twenty-four (24) hours overtime for work performed by contractor Beverly Asphalt on October 8, 15 and 16, 2018 at Claimants (sic) applicable overtime 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.

Claimants S. Gengnagel, J. Tuttle and A. Soto have established and hold seniority within various classifications of the Bridge and Building (B&B) Department of the Carrier's Maintenance of Way Department at the time of this dispute.

This claim is based on the proper application of the Scope Rule and Rule 1 of the Agreement which, in pertinent part, provides:

These rules shall be the agreement between the Indiana Harbor Belt Railroad Company, and its employees of the classifications herein set forth represented by the Brotherhood of Maintenance of Way Employees, engaged in work recognized as Maintenance of Way work, such as inspection, construction, dismantling, demolition, repair and maintenance of water facilities, bridges, culverts, buildings and other structures, tracks, fences, road crossings, and roadbed, and work which as of the effective date of this Agreement was being performed by these employees, and shall govern the rates of pay, rules and working conditions of such employees.

The following work is reserved to BMWE members: all work in connection with the construction, maintenance, repair, inspection or dismantling of tracks, bridges, buildings, and other structures or facilities used in the operation of the carrier in the performance of common carrier service on property owned by the carrier. This work will include rail, guard rail, switch stand, switch point, frog, tie, plate, spike, anchor, joint, gauge rod, derail and bolt installation and removal; erection and maintenance of signs, such as mile posts, speed restriction signs, resume speed signs, crossing and station signs, warning signs, and signs attached to buildings or other structures (except billboards); construction of track panels; welding, grinding, burning, and cutting; ballast unloading, regulating, equalizing, and stabilizing; track and

switch undercutting; cribbing between ties; track surfacing and lining; snow removal (track structures and right of way); road crossing installation and renewal work; asphaltting of road crossings (unless required by outside agencies), culvert installation, repairs, cleaning and removal; yard cleaning; security and ornamental fences; distribution and collection of new and used track, bridge and building material; operate machines, equipment, and vehicles; transporting maintenance of way employees; "mowing, brushcutting; installation, maintenance, and repairs of turntables, platforms, walkways, and handrails; head wall and retaining wall erection; cleaning, sandblasting, and painting of machines, equipment, bridges, turntables, platforms, walkways, handrails, buildings, and other structures or facilities; rough and finish carpentry work; concrete and masonry work; grouting, plumbing, and drainage system installation, maintenance, and repair work; cooling and heating system installation, maintenance, and repair work; fuel and water service work; roof installation, repairs, and removal; Gibson Material Yard: the duties involved are not limited to material handling, sorting, loading materials to gondolas, box cars, trucks, etc. and the delivery of material to the work sites; M of W Track Protection (flagging): the duties involved are providing track protection relating to the repair of M of W tracks, right of ways, and structures when track disturbance is anticipated; all daily track inspections and switch inspections relating to M of W tracks and structures as required by the FRA will be performed by BMW; and any other work customarily or traditionally performed by BMW represented employees. In the application of this Rule, it is understood that such provisions are not intended to infringe upon the work rights of another craft as established. It is also understood that this list is not exhaustive.

In the event the Company plans to contract out work within the scope of this Agreement, except in emergencies, the Company shall notify the General Chairman involved, 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. 'Emergencies' applies to fires, floods, heavy snow and like circumstances.

If the General Chairman, or his representative, requests a conference to discuss matters relating to the said contracting transaction, the designated representative of the Company shall promptly conference with him for that purpose. Said Company and Organization

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 Organization may file and progress claims in connection therewith.

At issue is whether the Carrier violated the Agreement when it assigned outside forces (Beverly Asphalt) to perform B&B Department work asphaltting a road crossing located at Sohl Street at Mile Post 5 on the East Seniority District.

By letter dated December 3, 2018, the Organization filed a timely claim on behalf of the Claimants. The claim was properly handled by the parties at all stages of the appeal up to and including the Carrier's highest appellate officer. The matter was not resolved and is now before this Board for resolution.

In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. As the moving party, it was the Organization's responsibility to meet its burden to prove by a preponderance of evidence that the Carrier committed the alleged violation(s). After careful review of the record, the Board finds the Organization has not met its burden. There is insufficient evidence that the work occurred on the Carrier's property. Therefore, the above-referenced rules were not violated.

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.