

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45013  
Docket No. MW-46448  
23-3-NRAB-00003-210277**

**The Third Division consisted of the regular members and in addition Referee Barbara C. Deinhardt 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 asphaltting a road crossing at 149th Street in East Chicago, Indiana on the East Seniority District on September 13, 2019 (System File D19IHB1-12A 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 must now each ‘... be compensated for all straight and overtime hours worked by Beverly Asphaltting on September 13, 2019 to be divided equally and proportionally between Claimants at their applicable straight and 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.**

**The Carrier was performing repairs to a rail crossing at 149th St in East Chicago, Illinois. The work was done by Carrier forces. Following that work, the public road leading up to the crossing had to be asphalted. This work was contracted by the Carrier to Beverly Asphalt, a contractor licensed by the City and State.**

**The Organization argues that the work performed by the Beverly Asphalt crew was work customarily assigned to and performed by Organization members. Claimants were fully qualified and capable of performing this work. The Carrier failed to notify the General Chairman in advance of this subcontracting out and failed to make a good faith effort to reduce the incidence of subcontracting.**

**According to the Carrier, the Scope Rule only applies to work on property owned by the Carrier. The asphalt work needed on the public roadway is not Scope-covered work nor has this work been the exclusive work of Organization members. Eight other road crossings have been done in a similar manner in 2017 and 2018 without notice and without any claim filed by the Organization. No notice was required here.**

**Upon a review of the record as a whole, the Board finds that the Organization has not met its burden of proof. As found by the Board in a factually similar case, Award 45007, "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 3<sup>rd</sup> day of August 2023.