

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45077
Docket No. MW-47033
24-3-NRAB-00003-220081**

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: (
(Keolis Commuter Services

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 and Structures Department work (thermite welding) at multiple locations on the Franklin Branch at Walpole Interlocking beginning on November 14, 2020 and continuing (System File S-2024K-2413/BMWE 08/2021 KLS).

(2) The Agreement was violated when the Carrier assigned outside forces to perform Maintenance of Way and Structures Department work (thermite welding) at multiple locations on the Franklin Double Track beginning on October 24, 2020 and continuing (System File S-2024K-2412/BMWE 07/2021).

(3) The Agreement was further violated when the Carrier failed to comply with the advance notification and conference provisions in connection with the Carrier’s plans to contract out the work referred to in Parts (1) and/or (2) above and when it failed to assert good-faith efforts to reach an understanding concerning said contracting out as required by Rule 24 of the Agreement.

(4) As a consequence of the violations referred to in Parts (1) and/or (3) above, Claimants A. Secchiaroli, P. Smith, D. O’Connell, D. Secchiaroli and J. Silva must now be compensated ‘... all hours worked by contractor employees to be divided equally and proportionately at their

respective claimed rates of pay, as well as all credits for vacation and all other benefits for their lost work opportunity. ***'

(5) As a consequence of the violations referred to in Parts (2) and/or (3) above, Claimants A. Secchiaroli, P. Smith, D. O'Connell, D. Secchiaroli and J. Silva must now be compensated '... all hours worked by contractor employees to be divided equally and proportionately at their respective claimed rates of pay, as well as all credits for vacation and all other benefits for their lost work opportunity. ***''''

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:

The Organization alleges Carrier's assignment of outside forces to perform Maintenance of Way and Structures Department work (thermite welding) at multiple locations on the Franklin Branch at Walpole Interlocking beginning on November 14, 2020 and continuing was in violation of the parties' Agreement. Applicable provisions of that Agreement state as follows in pertinent part:

RULE 24 - CONTRACTING OUT

1. In the event the Carrier plans to contract out work within the scope of the schedule agreement, the Chief Engineer shall 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 15 days prior thereto.

2. If the General Chairman requests a meeting to discuss matters relating to the said contracting transaction, the Chief Engineer or his representative shall promptly meet with him for that purpose. The Chief Engineer or his representative and the General Chairman or his representative shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached, the Chief Engineer may nevertheless proceed with said contracting, and the General Chairman may file and progress claims in connection therewith.

3. Nothing in this Rule shall affect the existing rights of either party in connection with contracting out. Its purpose is to require the Carrier to give advance notice and, if requested, to meet with the General Chairman to discuss and if possible reach an understanding in connection therewith. * * *

Position of Organization:

As the Organization sees it, the claimed work is typical Maintenance of Way work which has ordinarily and traditionally been assigned to and performed by the Carrier's Maintenance of Way forces, being contractually reserved to them. The Carrier did not so much as issue the required contracting out notice in this case nor have the required good-faith conference with the Organization. Claimants were readily available to perform the subject work and would have performed this work had the Carrier afforded them the opportunity to do so.

Position of Carrier:

On August 17, 2020, in accordance with Rule 24(1), the Carrier sent a contracting out letter to General Chairman, Jason Graham regarding projects that needed to be completed. That letter provided, in relevant part, that the Carrier was planning to contract out "[t]urnout installation, Tie installation, Field welding, Track Surfacing and Culvert replacement" on the Gloucester Branch. The letter was provided to the Organization well in advance of the work being commenced. Due to existing work obligations for Organization members, including Claimants, the parties were unable

to reach an agreement. The work noticed in the August 17, 2020 letter was then completed on multiple dates in September.

No Claimant lost wages and each was fully employed, including overtime work, on the dates of the contested outsourcing. As a result, Claimants experienced no damages from the outsourcing in question. The Carrier insists that because the contractually dictated process was followed, it is able to contract out the work of concern here.

Analysis:

The Carrier has established that the contractually negotiated process for contracting out work was followed in this instance. On the merits, it must be noted that the Organization has the burden of establishing a contract violation in this instance. The record does not support such a conclusion.

This award does not constitute a ruling that the Carrier is free to contract any and all work that has been noticed and conferenced. However, under the facts of this case, we find the Organization's burden has not been met.

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 31st day of October 2023.