

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45078
Docket No. MW-47034
24-3-NRAB-00003-220082**

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

**(Brotherhood of Maintenance of Way Employes 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 (Manafort) to perform Maintenance of Way and Structures Department work (included, but not limited to, removing rail on the #1 and #2 Tracks at Mile Post 29.75 on the Gloucester Branch, removing a spring switch at that location and installing a new switch on the Gloucester Branch) beginning on September 14, 2020 and continuing (System File S-2024K-2410/BMWE 02/2021 KLS.)

2) 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 Part (1) 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.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants E. McKinnon, C. Darcy, D. Gordon, R. Downes, M. MacInnis, C. Breedy, D. Enes and C. Marelli shall now each 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 that beginning on September 14, 2020 and continuing, the Carrier assigned outside forces (Manafort) to perform Maintenance of Way Department work including, but not limited to, removing rail on the #1 and #2 Tracks at Mile Post 29.75 on the Gloucester Branch, removing a spring switch at that location and installing a new switch. Rule 24 of the parties' Agreement addresses contracting out and provides as follows in pertinent part:

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:

The Organization contends that the claimed work is typical Maintenance of Way work that has ordinarily and traditionally been assigned to and performed by the Carrier's Maintenance of Way forces and is 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.

It is clear that the language of Rule 1 and Rule 29 specifically reserves work ordinarily and traditionally performed by the Maintenance of Way Employees to the bargaining unit. Inasmuch as the subject work was proven to be of a sort ordinarily and traditionally performed by Maintenance of Way Employees, there can be no question that the instant work is reserved by clear language.

Position of Carrier:

The claim here seeks pay for work that was properly contracted out by the Carrier in full and complete compliance with the terms of the collective bargaining agreement. The Carrier sent a contracting out letter to General Chairman J. Graham regarding projects that needed to be completed. That letter provided, in relevant part, that the Carrier was planning to contract out "Turnout installation, Grade crossing renewal, Tie and Rail installation, Culvert replacement, Field welding, Track surfacing" on the Franklin Branch. The letter was provided to the Organization well in advance of the work being commenced.

On September 18, 2020, the Carrier and Organization conferenced the matter to see if an agreement could be reached regarding the work, however the parties were unable to reach an agreement. No Claimant lost wages during the period of outsourcing; each was fully employed performing work.

In the Carrier's view, though no agreement was reached regarding the noticed work, this does not impact the right of the Carrier to contract out the work. It maintains that because the process was followed, it was able to contract out the work at issue here. It argues that the plain intent of the parties in Rule 24 was to allow the Carrier to contract out bargaining unit work when not in connection with the layoff of Organization personnel, so long as certain notice and conference procedures were followed.

Analysis:

The Carrier has established that the Rule 24 process for contracting out work was followed in this instance. As to the merits of the case, the Organization must carry the burden of establishing a contract violation under the facts of the particular case. The record does not support the finding that Rule 24 was violated in this case. This award does not constitute a ruling that the Carrier is free to outsource any and all work that has been properly 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.