

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45085
Docket No. MW-47232
24-3-NRAB-00003-220203**

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: (

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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 (including, but not limited to, clearing brush around culverts, cleaning out the inside of culverts, the removal and replacement of culverts; removal of track components including ties, rail, track panels, etc. and installation of track components) in multiple locations on the Carrier’s Gloucester Branch beginning on November 9, 2020 (System File S-2024K-2414/BMWE 12/2021 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, C. Merelli, J. Harris, D. Dennis, G. Koslouski, J. Boucher, P. George, T. Mimms, B. Parlee, R. Castro, B. Gonzalez and T. Flaherty shall 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. This Claim is also ongoing and inclusive of all hours worked by the contractor on the Gloucester Branch until the contractors are removed from the property, or until this work ceases to exist, whichever comes first. ***”””

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 November 9, 2020, the Carrier improperly assigned outside forces (Manafort) to perform Maintenance of Way Department work (including, but not limited to, clearing brush around culverts, cleaning out the inside of culverts, the removal and replacement of culverts; removal of track components including ties, rail, track panels, etc. and installation of track components) in multiple locations on the Carrier's Gloucester Branch. The resulting claim was fully processed through the grievance procedure to consideration by this Board.

The governing provision of the parties' Agreement is Rule 24, regarding 'Contracting Out.' This provision states 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 references Rule 1 regarding Scope: “While it is not the intent of the parties to either diminish or enlarge the work being performed in a territory under this Agreement, the work generally recognized as work ordinarily performed by the Brotherhood of Maintenance of Way Employees as it has been performed traditionally in the past in that territory will continue to be performed by those employees.”

The record establishes that the Carrier failed to notify the General Chairman, in writing, in adequate advance of assigning outside forces to perform Maintenance of Way work. In this case, the Carrier has alleged that it provided advance notice for the claimed work by letter dated October 28, 2020. However, such a letter is not included in the record. Notwithstanding this fact, the Organization submits that the Carrier’s letter contained no listed reasons for the Carrier’s decision to allow outside forces to perform the claimed work. Additionally, the Organization asserts that the Carrier’s letter failed to afford the Organization the required fifteen days’ notice prior to the contracting out; it maintains the Notice was sent only thirteen days prior to the contracting. In this regard, the Carrier’s purported letter was dated October 28, 2020 and the claimed work in this instance commenced on November 9, 2020. As the Organization sees it, the Carrier’s failure to provide proper advance notice requires a sustaining award.

Position of Carrier:

In the Carrier's assessment, the Organization's arguments regarding the timing of outsourcing are misguided because the work was not commenced until over fifteen days after the notice was sent, plus the parties had already conferenced with no agreement being reached.

Workers began moving equipment prior to fifteen days after the notice, but placement of equipment does not constitute the work being contested. In the Carrier's view, the parties' contractual process is designed to permit the Carrier to contract out bargaining unit work, so long as the contracting out does not result in the layoff of an employee in the bargaining unit. The process also allows the parties to meet to discuss issues "relating to" the contracting out, if the Organization wishes to do so.

On October 28, 2020, in accordance with Rule 24(1), the Carrier sent a contracting out notice to General Chairman J. Graham regarding projects that needed to be completed. The reason for seeking to contract out that work was that Organization members lacked the skill to perform a full culvert replacement. On November 4, 2020, the Carrier and Organization held a conference, by phone, to discuss the notice. While the parties had a full discussion of the matter, they were unable to overcome come to agreement regarding the qualification issues. The Carrier therefore moved forward with contracting out the work. No Claimant lost wages and each was fully employed on the dates of the outsourced work. They therefore experienced no damages of any kind by the contracting out cited in this claim.

Analysis:

The parties' Agreement recognizes different District Units for Tie Installation and Materials Distribution. Rule 29 establishes that auxiliary forces that may work in conjunction with the identified units includes "Material Distribution Gang." We read this language as an acknowledgement of the different skills and job duties involved in performing particularized District Unit work as opposed to delivering the materials needed to do the work.

Accordingly, we find that these two functions are appropriately separated when performed by contractors as well. As a result, we are persuaded that the outsourcing noticed in the October 28 letter did not begin until after the 15-day period had run.

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.