

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45134  
Docket No. MW-42862  
24-3-NRAB-00003-220895**

**The Third Division consisted of the regular members and in addition Referee Sarah Miller Espinosa when award was rendered.**

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

**PARTIES TO DISPUTE: (**

**(Union Pacific Railroad Company (former Chicago and  
North Western Transportation Company)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier assigned or otherwise allowed outside forces to perform Maintenance of Way and Structures Department work (construct a turnout switch) at Mile Post 35.4 at the mainline going into the industry at Jordan, Minnesota on the Mankato Subdivision beginning on August 21, 2013 (System File B-1301C-166/1593684 CNW).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper advance notice of its intent to contract out the above-referenced work 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 Rule 1 and Appendix ‘15’.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants S. Pettis, R. Melheim, C. Gronewold, E. Nelson, A. Hartman, B. Bass, D. Clough and D. Brooks shall each ‘... be compensated for the lost opportunity to work, all hours that the contractor’s employees performed Maintenance of Way work, reportedly two hundred and fifty six (256) at the appropriate rates of pay. \*\*\*’ (Emphasis in original).”**

**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.

This claim was made on behalf of the named Claimants. At the time of the dispute, the Claimants established and held seniority within various classifications.

Rule 1B is central to the determination of this claim. Rule 1B states:

**Rule 1 – SCOPE**

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**Rule 1 – SCOPE**

**B. Employees included within the scope of this Agreement in the Maintenance of Way and Structures Department shall perform all work in connection with construction, maintenance, repair and dismantling of tracks, structures and other facilities used in the operation of the Company in the performance of common carrier service on the operating property. This paragraph does not pertain to the abandonment of lines authorized by the Interstate Commerce Commission.**

**By agreement between the Company and the General Chairman work as described in the preceding paragraph, which is customarily performed by employees described herein, may be let to contractors and be performed by contract's forces. However, work may only be contracted provided that special skills not possessed by the Company's Employees, special equipment now owned by the Company, or special**

material available only when applied or installed through supplier, are required, or unless work is such that the Company is not adequately equipped to handle the work, or, time requirements must be met which are beyond the capabilities of Company forces to meet.

In the event the Company plans to contract out work because of one of the criteria described herein, it shall notify the General Chairman of the Brotherhood 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, except in "emergency time requirements" cases. If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the Company shall promptly meet with him for that purpose. The Company and the Brotherhood 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 Brotherhood may file and progress claims in connection therewith.

In the instant matter, the Carrier asserts, and the record established, that the work in dispute was not under the Carrier's control nor was it performed on the Carrier's property. That is, the switch was built off property at the behest of Industry, for Industry's use, and was not built at the Carrier's expense. The Carrier did not contract out nor pay for the work in question.

Thus, the claim is denied.

**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 28<sup>th</sup> day of November 2023.