

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 45168  
Docket No. MW-43810  
24-3-NRAB-00003-230204

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

(Brotherhood of Maintenance of Way Employees Division –  
IBT Rail Conference  
PARTIES TO DISPUTE: (  
(BNSF Railway Corporation

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 (drainage work) at Havelock Yard in Lincoln, Nebraska on May 9, 2015 (System File C-15-C100-110/10-15-0267 BNR).
- (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 this work or to make a good-faith effort to reduce the incidence of subcontracting and increase the use of its Maintenance of Way forces as required by Rule 55 and Appendix Y.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants F. Fankhauser, B. Kreikemeier, C. Clifton, R. Musil and J. Francke must each be paid for ten (10) hours at their respective overtime rates of pay for the work performed by the outside contractors on the claim date.”

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 Claimants have established and hold seniority within the Carrier's Maintenance of Way Department.

The Organization asserts that on May 9, 2015, the Carrier assigned outside forces to perform drainage work at Havelock Yard in Lincoln, Nebraska. The Carrier disputed that the work took place as alleged.

In a letter dated May 28, 2015, the Organization filed a claim on behalf of the Claimants. The Carrier denied the claim in a letter dated July 27, 2015. Following discussion of this dispute in conference, the positions of the parties remained unchanged, and this dispute is now properly before the Board for adjudication.

The Organization contends that drainage work is customarily and historically performed by Maintenance of Way ("MOW") forces and is reserved to them under Rules 1, 2, 5, 29, 55 and the Note to Rule 55 of the parties' Agreement. The Organization contends that the claimed drainage work was performed in connection with the maintenance of the tracks, structures, or facilities, so there can be no question that the claimed work is customarily performed by MOW forces and is reserved to them.

The Organization contends that the Carrier violated the Note to Rule 55 and the National Letter of Agreement when it failed to notify the Organization in writing in advance of its plans to assign outside forces to perform the claimed work. Furthermore, the parties set forth specific criteria under which reserved work may be contracted out and that these are the only criteria under which the Carrier may assert justification for its desire to contract out work customarily performed by MOW employees. The Organization contends that there is no question that the Carrier failed to comply with the advance notification and conference provisions of the Agreement. Therefore, the Organization contends that the Claimants are entitled to the remedy sought.

The Carrier contends that the claim must be denied because the Organization

has failed to present any proof that the work occurred as claimed. The Carrier contends that in its initial denial, the Carrier informed the Organization that it could find no record of the work occurring and that the Organization has not presented any evidence to the contrary. Thus, the claim must be denied.

Finally, the Carrier contends that the Organization has failed to prove the Claimants are entitled to any damages. The Carrier contends that the Claimants were fully employed and suffered no monetary loss.

In a claims matter, the Organization bears the initial burden of demonstrating that the work occurred as claimed, that the work belonged to the Claimants, and is encompassed by the Scope of the Agreement.

On the record before us, the Organization's proffered evidence falls short of proving that a violation has occurred. In its initial denial, the Carrier averred that it had no record of the work occurring as alleged. The Organization's response was insufficient to overcome this representation.

**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 22<sup>nd</sup> day of February 2024.