

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45210  
Docket No. MW-44025  
24-3-NRAB-00003-230246**

**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 (remodeling offices) in the Northtown yard in the Twin Cities Division beginning on July 15, 2015 and continuing (System File T-D-4759-M/11-16-0007 BNR).**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with advance notification of its intent to contract out the aforesaid work or 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 M. Olson, M. Oswald, K. Kirberger shall now each be compensated an equal and proportionate share of all hours worked by the contractor at their respective overtime rates of pay.”**

**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 Carrier contends that by letter dated May 12, 2015, it provided proper advance notice of its intention to use outside contractors for all work associated with the facility improvements to the offices located at the Northtown Terminal Hump Tower and GOB on the Twin Cities Division. The Carrier asserted that it was not adequately equipped and its forces did not possess all the specialized skills for all aspects of the project.

Beginning on July 15, 2015 and continuing, the Carrier assigned outside forces to remodel offices in the Northtown yard in the Twin Cities Division.

In a letter dated September 12, 2015, the Organization filed a claim on behalf of the Claimants. The Carrier denied the claim in a letter dated November 11, 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 the work of remodeling an office is typical Maintenance of Way ("MOW") work. This work has customarily and historically been assigned to and performed by the Carrier's MOW forces and is contractually reserved to them under Rules 1, 2, 5, 6, 29, 55 and the Note to Rule 55 to the parties' Agreement.

The Organization contends that the Carrier failed to comply with the provisions of the Note to Rule 55 and Appendix Y. The Organization contends that the work performed by the contractor forces required no special skills that were not already possessed by the experienced and fully qualified Claimants or any other MOW forces.

The Carrier contends that the Agreement's general Scope Rule does not reserve the work to the BMWED, so the Organization must show that its members exclusively performed this work on a system-wide basis, which it failed to do. The Carrier contends that if the MOW forces have performed similar work in the past, this would suggest no more than a "mixed practice" on the property, which defeats the Organization's claim to exclusive rights to perform the work.

The Carrier contends that numerous Boards have consistently held that remodeling buildings is not customarily performed by BNSF employees and can be contracted out. The Carrier contends that its forces do not possess construction skills and the Carrier does not keep a workforce ready to complete major construction projects, such as the new buildings at issue here.

The Carrier contends that it timely notified the Organization that it was contracting out this construction work because it was not adequately equipped and its forces did not possess the specialized skills necessary to complete this construction project. Further, the Carrier contends that it is not required to piecemeal one part of a large project to the Organization's members.

In a contracting dispute, the Organization bears the initial burden of proof. It must show that the claimed work is encompassed by the Scope Agreement or that the Organization's members have customarily and historically performed this work. After a careful review of the record, we find that the Organization has failed to meet that burden. In light of this, the other arguments raised by the Carrier need not be considered.

**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.