

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45222
Docket No. MW-45787
24-3-NRAB-00003-230252

The Third Division consisted of the regular members and in addition Referee Melinda Gordon when award was rendered.

(Brotherhood of Maintenance of Way Employes Division –
(IBT Rail Conference

PARTIES TO DISPUTE: (
(BNSF Railway Company

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 work (thermite welding) at various locations on the Galveston Subdivision and the Red River South Division on March 26, 2018 through April 6, 2018 and continuing (System File 2421-SLA8-1841/14-18-0513 BNS.)
- (2) The Agreement was further violated when the Carrier failed to comply with the advance notification and conference provisions regarding the work referred to in Part (1) above and when it failed 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 Appendix 8 and the December 11, 1981 National Letter of Agreement.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants T. Bennett, III, D. Singleterry, J. Randall, Jr. and J. Stumbaugh shall now each be compensated for seventy-two (72) hours at the appropriate rate 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 Organization filed the instant claim on behalf of the Claimants, alleging that the Carrier violated the parties' Agreement by failing to provide proper notice regarding the use of subcontractor(s) to perform thermite welding work on the Galveston Subdivision and the Red River South Division.

The Carrier submits that the South Agreement (former ATSF Agreement) documents a long-standing Agreement between the parties to address welder shortages. Pursuant to the agreement, the Carrier is required to maintain the same number of Welder Trainees in the Carrier's Welder Training Program as there are contracted welders in the respective seniority district.

By letter dated March 1, 2018, the Carrier provided the General Chairman notice by letter of intent ("LOI") to contract for up to three (3) two (2) man welding crews per Appendix 8 of the South Agreement. The Organization mailed a request to conference the LOI dated March 9, 2018. The Organization and the Carrier conferenced the issue on March 16, 2018. The contracted welders did not start until March 26, 2018. On March 23, 2018, an amendment to the LOI, adding two (2) additional two-man gangs (four welders), with an anticipated start date of April 16, 2018, was sent to the General Chairman. The Organization mailed a request to conference the amended LOI on March 28, 2018, and a conference was held on April 1, 2018. The additional contracted welders started working on April 16, 2018.

When the Carrier plans to contract out work typically performed by its Maintenance of Way ("MOW") employees that the parties agree falls under the Scope of the Agreement, it is required to notify the General Chairman in writing of such plans in accordance with Appendix No. 8 (Article IV of the May 17, 1968, National Agreement) and the amendment and interpretation thereof embodied in the December 11, 1981, National Letter of Agreement, which reads:

**“APPENDIX NO. 8
ARTICLE IV - CONTRACTING OUT- NATIONAL AGREEMENT
5/17/68**

In the event a carrier plans to contract out work within the scope of the applicable schedule agreement, the carrier shall notify the General Chairman of the organization involved 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.

If the General Chairman, or his representative, requests a meeting to discuss the matters relating to the said contracting transaction, the designated representative of the carrier shall promptly meet with him for that purpose. Said carrier and organization representatives shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached the carrier may nevertheless proceed with said contracting, and the organization may file and progress claims in connection therewith.

Nothing in this Article IV 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 or his representative to discuss and if possible reach an understanding in connection therewith.

Existing rules with respect to contracting out on individual properties may be retained in their entirety in lieu of this rule by an organization giving written notice to the carrier involved at any time within 90 days after the date of this agreement.

“LETTER OF UNDERSTANDING DATED SEPTEMBER 28, 1956

In connection with the application of the above, the Carrier may, without conference with the General Chairman, arrange for the use of equipment of contractors or others and use other than Maintenance of Way employes of the Carrier in the performance of work in emergencies, such as wrecks, washouts, fires, earthquakes, landslides and, similar disasters.”

“December 11, 1981

Dear Mr. Berge:

The carriers assure you that they will assert good-faith efforts to reduce the incidence of subcontracting and increase the use of their maintenance of way forces to the extent practicable, including the procurement of rental equipment and operation thereof by carrier employees.

The parties jointly reaffirm the intent of Article IV of the May 17, 1968 Agreement that advance notice requirements be strictly adhered to and encourage the parties locally to take advantage of the good faith discussions provided for to reconcile any differences. In the interests of improving communications between the parties on subcontracting, the advance notices shall identify the work to be contracted and the reasons therefor.

Notwithstanding any other provision of the December 11, 1981 National Agreement, the parties shall be free to serve notices concerning the matters herein at any time after January 1, 1984. However, such notices shall not become effective before July 1, 1984.

“Please indicate your concurrence by affixing your signature in the space provided below.

Very truly yours,

/s/ Charles I. Hopkins, Jr. Charles I. Hopkins, Jr.

I concur:

/s/ O. M. Berge”

The documentary evidence before the Board demonstrates the Carrier complied with Appendix 8 by providing the General Chairman with 15-day advance notices of intent to contract the disputed work and timely conferenced the matter with the Claimants. Based on the record, the Board finds that the Organization failed to sustain its burden of proof on any of the issues in this claim.

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 28th day of March 2024.