

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45224
Docket No. MW-45971
24-3-NRAB-00003-200545**

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

**(Brotherhood of Maintenance of Way Employees 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 or otherwise allowed outside forces (Midwest and Wiskerchen Trucks) to perform Maintenance of Way Department work (picking up debris, old dirt pile, ties and rail) at the Lawrence and Topeka Yards on January through 24, 2019 and continuing (SystemFile2403-SLA8-1910/14-19-0143 BNS).**
- (2) The Agreement was further violated when the Carrier failed to 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 fifteen (15) days prior thereto regarding the work referred to in Part (1) above and when it failed to assert good-faith efforts to reach an understanding and reduce the amount of contracting as required by Appendix No. 8 and the December 11, 1981 National Letter of Agreement.**
- (2) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants L. Saffold and J. Coursen shall now be compensated one hundred twenty (120) hours each and continuing at their respective rates of pay for all hours worked by the outside forces during the claim period.”**

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 asserts that the Carrier violated the Agreement when it failed to employ Claimants to pick up debris, an old dirt pile, ties, and rail at the Lawrence and Topeka yards. The Organization contends that this violates Appendix 8, Article 4 of the National Agreement regarding contracting out Maintenance of Way ("MOW") work.

The Carrier submits that the clean-up was pursuant to an "as is where is" personal property sales agreement, with Midwest Mo. Contractors ("Midwest"). The Carrier contends that Midwest performed the tie clean-up at Lawrence and Topeka yards on the Topeka Subdivision pursuant to the "as is where is" private contractual agreement. The conclusion that this type of agreement does not constitute contracting out of work as defined in the Agreement is well established. As recognized by prior awards "the portion of the work involved in the sale and removal of Carrier property [ties and rails] was not improper and required no Article IV notices."

Moreover, the Organization failed to sustain its burden of proving a violation of the Agreement by a preponderance of the probative evidence. The Organization's deficient supporting evidence severely impacts the claim's viability. Aside from listing a start date, the Organization failed to provide evidence of the alleged days or hours spent by Midwest in loading and hauling the scrapped material. Further, the Organization did not submit any witness statements regarding the work or invoices from the contractor specifying the work completed.

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.