

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45227
Docket No. MW-46073
24-3-NRAB-00003-200306

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 or otherwise allowed outside forces (LG Pike Construction) to perform Maintenance of Way Department work (install a crossing) at or near Mile Posts 147.6, 143.2, 52.3, 52.2 and 42.7 on the Strong City Subdivision beginning September 27, 28 and October 4, 2018 and continuing (System File 2402-SLAS- 1897/14-19-0059 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.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants T. Toot, J. Tarver, B. Seastrom, J. Crowell, J. McCormick, D. Zimmerman, J. Witte, C. Brown, K. Alderete, J. Stockman, E. Jaramillo, R. Barr and J. Lorenzo, II ‘... should be allowed compensation of thirty-six (36) hours, for work being wrongfully performed by the contractors, at the claimants’ respective 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 Organization filed the instant claim on behalf of the Claimants, alleging that the Carrier violated the parties' agreement by subcontracting out Maintenance of Way ("MOW") Department work, installing a crossing at or near Mile Posts 147.6, 143.2, 52.3, 52.2 and 42.7 on the Strong City Subdivision beginning September 27, 28 and October 4, 2018, and continuing until completion.

The Organization maintains MOW forces customarily perform this work. Further, the Carrier failed to provide proper notice to the General Chairman in advance of its plan to contract this work and precluded the Organization the opportunity to discuss with the Carrier the Carrier's plans.

When the Carrier plans to contract out work customarily performed by MOW employees, the Carrier is required to notify the General Chairman in writing of such plans in compliance with Appendix No. 8, Article IV of the May 17, 1968, National Agreement and the amendment and interpretation embodied in the December 11, 1981, National Letter of Agreement which in pertinent part states:

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 employees 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”**

Based on the record before this Board, the Carrier complied with the notice requirements of Appendix No. 8, Article IV of the May 17, 1968, National Agreement and the amendment and interpretation embodied in the December 11, 1981, National Letter of Agreement. By letter dated December 19, 2017, the Carrier notified the General Chairman of the Carrier’s intent to contract the work of putting asphalt at grade crossings. Attached to the Carrier’s December 19, 2017, letter was a tentative schedule indicating when the work of placing asphalt at grade crossings was expected to occur in 2018 and an invitation to confer on the contracting issue at an in-person meeting on January 3, 2018, or at another designated time convenient to the General Chairperson’s schedule.

Further, the Organizations claim dated November 14, 2018, lacks evidence to support the allegations that contractors had installed crossings at five (5) locations of the Strong City Subdivision. In contrast, the evidence demonstrates that contractors

only performed asphalt work on the road surfaces approaching the crossings, and the work was covered by System Notice 01-18. MOW forces, not contractors performed all of the crossing work. The submission of Contractor time sheets supports this conclusion.

To prevail, the moving party must support its claim by a preponderance of the evidence. Based on the deficiency of applicable supporting evidence provided by the Organization, no further inquiry is necessary.

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.