

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45228
Docket No. MW-46147
24-3-NRAB-00003-200139**

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 (SAPP and Son Construction) to perform Maintenance of Way Department work (clean up, redress and debris removal) for a bridge project at or near Mile Post 292.9 on the Thayer North Subdivision on August 6 through August 30, 2018 and continuing (System File 0493-SLA8- 1879/14-19-0019 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 R. Groeteke, R. Harris, E. Williams and G. Bryan shall now be compensated at their respective rates for all hours worked by the outside forces during the claim period which includes two hundred (200) hours and continuing.”**

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 of clean up, redress and debris removal for a bridge project at or near Mile Post 292.9 on the Thayer North Subdivision on August 6 through August 30, 2018, and continuing.

The Organization maintains that this is work that is customarily performed by MOW forces. Further, the Carrier failed to provide proper notice to the General Chairman in advance of its plan to subcontract this work and failed to grant an opportunity to the Organization to discuss the plans with the Carrier.

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 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”**

After a review of the record below, the Board concludes that the Organization failed to meet its burden to establish that MOW employees historically performed this work system-wide to the exclusion of others. Further, the Carrier asserts that the General Chairman was notified of the Carrier’s intent to contract out this work by letter dated February 15, 2018. The letter of intent (“LOI”) issued by the Carrier provided notice of the three (3) locations where the work would occur, the type of work involved in the project, the equipment needed and the anticipated start date of March 5, 2018. The parties also conferenced the matter on February 23, 2018.

The Organization asserted that the work is reserved solely to Group 5 Excavator Special Equipment Operators (“SEO”). However, a review of the record below, established that none of the individuals listed as Claimants had Group 5 seniority at the time of the claim or the requisite skills to complete the work at issue.

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.