

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45240
Docket No. MW-46495
24-3-NRAB-00003-210242**

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 (LG Pike) to perform Maintenance of Way Department work inserting ties utilizing an excavator machine at or near Mile Posts 179.5 to 179.7 on the LaJunta Subdivision on August 19, 2019 through August 21, 2019 and continuing until project completion (System File 2404-SLA8} Ex Parte } 19118/14-20-0031 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, Claimant J. Crowell shall now be compensated thirty-two (32) hours at the appropriate rate of pay for the 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 filed the instant claim on behalf of Claimants alleging that the Carrier violated the parties' Agreement by subcontracting out Maintenance of Way("MOW") Department work of inserting ties utilizing an excavator machine at or near Mile Posts 179.5 to 179.7 on the LaJunta Subdivision on August 19, 2019, through August 21, 2019, and continuing until completion of the project.

The Carrier asserts, on the dates applicable to this matter, MP 179.5 to 179.7 on the LaJunta Subdivision had an emergency derailment caused by straight winds that required immediate attention to restore the track to service. The Carrier submits that thirty (30) trains derailed causing significant delays. The Carrier concedes using contractors for emergency repairs to restore the tracks to unrestricted service. Pursuant to Appendix 8 of the South Agreement the Carrier submits it was permissible to use contractors to restore the track. Appendix 8 of the South Agreement, includes, in relevant part, as follows:

LETTER OF UNDERSTANDING DATED SEPTEMBER 25, 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.

In contrast, the Organization questions the validity of the Carrier's defense and argues that the notice provisions of Appendix No. 8 and the December 11, 1981 National Letter

of Agreement apply. The Organization underscores that the Carrier has provided incomplete documentary evidence to prove an emergency occurred.

In keeping with arbitral precedent, when there is an irreconcilable dispute on material facts, the Organization bears the burden of proof. The Board has no alternative but to dismiss this claim. See, Third Division Award 31831, Third Division Award, 38007. This finding is limited to the unique circumstances of this case.

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.