

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45251
Docket No. MW-47500
24-3-NRAB-00003-220597**

The Third Division consisted of the regular members and in addition Referee George Edward Larney when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(Soo Line Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned outside forces:

(a) (Hulcher Services, Inc., Lorentz Construction, Stennes Excavation and Rybak Excavating & Contracting) to perform Maintenance of Way and Structures Department work (including but not limited to removal and installation of crossover panels, removal of track spoils, and grading work) in the vicinity of Mile Post 490c on the Merriam Park Subdivision on September 21, 22 and 24, 2020 and (b) (TJ’s Trucking & Excavating, Inc. and Stennes Excavating) to perform Maintenance of Way and Structures Department work (including but not limited to removal of the west yard lead shoe-fly from 3 to 4 track during lead reconstruction, lifting. Moving and/or installation of switches/panels, removal of track spoils and grading work) in the vicinity of Mile Post 391.0 on the River Subdivision on September 24, 25, 29 and 30 and October 1, 5, 6, 7, 14, 20, 21 and 22, 2020 (System File C-101-20-080-58/2021-00021841 CMP).

(2) The Agreement was violated when the Carrier assigned outside forces:

(a) (Stennes Excavation) to perform Maintenance of Way and Structures Department work (including but not limited to removal of track spoils, grading and ballast work) in the

- vicinity of Mile Post 102.1 and the Duplainville Diamond on the Watertown Subdivision beginning on November 10 and continuing into November 11, 2020 and
- (b) (Crane Masters, Inc.) to perform Maintenance of Way and Structures Department work (including but not limited to removal of the old diamond and installation of the new diamond) in the vicinity of Mile Post 102.1 and the Duplainville Diamond on the Watertown Subdivision beginning on November 10 and continuing into November 11, 2020 (System File C-104-20-080-61/2021-00019598).
- (3) The Agreement was further violated when the Carrier failed to furnish the General Chairperson with proper advance written notice of its intent to contract said work in Parts (1) and/or (2) above, as required by Rule 1, and failed to enter good-faith discussion to reduce the use of contractors and increase the use of Maintenance of Way forces as set forth in Appendix I.
- (4) As a consequence of the violations referred to in Parts (1) and/or (3) above:
- (a) Claimants K. Rutkowski, J. Hurtis, J. Krueger, K. Kruser, M. Radke, M. Kendall, D. Mesick, T. Wendler, D. Bryant, B. Clemmons and R. Strauss shall now be compensated ‘... a proportionate share EACH of two hundred twenty-six (226) hours at their applicable straight time and/or overtime rates of pay for all wages, benefits, and work opportunities lost on September 21, 22, and 24, 2020.’ and
- (b) Claimants K. Rutkowski, J. Hurtis and J. Krueger shall now be compensated ‘... a proportionate share EACH of one hundred seventy-one and one-half (171-1/2) hours at their applicable straight time and/or overtime rates of pay for all wages, benefits, and work opportunities lost on September 24, 25, 29, and 30, and October 1, 5, 6, 7, 14, and 22, 2020. ***’ and Claimants B. Clemmons and R. Strauss shall now be compensated ‘*** a proportionate share EACH of twenty-five and one-half (25-1/2) hours at their applicable straight time and/or overtime rates of pay for all wages, benefits, and work opportunities lost on October 20 and 21, 2020.’ (Emphasis in original).

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- (5) As a consequence of the violations referred to in Parts (2) and/or (3) above:
- (a) Claimants K. Rutkowski, J. Krueger, M. Kendall and D. Mesick shall now be compensated ‘... a proportionate share EACH of forty-four (44) hours at their applicable straight time and/or overtime rates of pay for all wages, benefits, and work opportunities lost on November 10 and 11, 2020.’ and
 - (b) Claimants R. Heald, J. Hurtis, K. Kruser, T. Wendler, J. Stoeckly, B. Howe, D. Bryant, R. Strauss, J. Hines, J. Wahlen and S. Wolter shall now be compensated ‘... a proportionate share EACH of one hundred eight (108) hours at their applicable straight time and/or overtime rates of pay for all wages, benefits, and work opportunities lost on November 10 and 11, 2020.’ (Emphasis in original).”

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.

At the outset, the Organization notes the instant dispute is comprised of two (2) claims and asserts both claims were initiated separately on the property but were combined by the Parties. On the other hand, Carrier submits the Notice of Intent filed by the Organization to this Board for resolution combined two separate claims and files, Carrier File 2021-00021841 and 2021 -0001958 into one (1) claim. Carrier asserts the Organization combined the two files when it filed both claims into one claim for resolution by the Board without its consent. Carrier concurs with the Organization

position that both claims were separately progressed on the property through the claim handling procedures as the two claims cover separate projects on different dates, had different contracting out notices, and reference different claimants. With regard to the latter point, the Board's review of both claims include fifteen (15) of the same Claimants and excludes two (2) Claimants from one of the claims, to wit: B. Clemmons and M. Radke. Carrier argues that the Organization's unilaterally consolidating these claims without its agreement to so do, raises a technical issue of making the two claims procedurally defective and as a result, urges the Board to dismiss the claims as presented as one claim.

While the Board is persuaded the technical issue raised by the Carrier has significant merit and would be sufficient by itself to reach a decision favorable to the Carrier, we are also persuaded the rationale we stated in deciding the other contracting out case among the nine (9) cases constituting this Docket, Case 23-3-NRAB-00003-2230596, has even more merit, to wit, we reiterate the following:

What is known by the record evidence before us is, that the Parties were unable to reach mutual agreement at the conference (in this case, two separate conferences), held to discuss the entirety of the work project intended by Carrier to be performed by employees of the contracting out Company hired to accomplish the work in question as set forth in the pre-contracting out notice. . . . The Board presumes that the arguments asserted by both Parties at the conference(s) that resulted in a stalemate are the identical arguments made before us in seeking a resolution of this impasse by our decision-making authority. However, we have determined upon a thorough review of the record [evidence in its entirety] . . . that the Organization failed to provide substantive evidence sufficient to support its position . . . specifically, to provide the necessary proof that specialized equipment was not needed to accomplish the work in question as argued by the Carrier nor to counter Carrier's position the skills necessary to accomplish the work in question exceeded the skills and knowledge of its own workforce employees.

Accordingly, based on the foregoing findings, we rule to deny the claim[s].

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.