

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45400
Docket No. MW-47647
25-3-NRAB-00003-220988**

The Third Division consisted of the regular members and in addition Referee Diego Jesús Peña when award was rendered.

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

PARTIES TO DISPUTE: (

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STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Barletta Heavy Construction) to perform Maintenance of Way and Structures Department work [removing approximately two hundred (200) feet of track using equipment ordinarily used by our members and replacing segment of track that they took out, using the same equipment ordinarily used by members and replacing the segment of track that they took out, using the same equipment] on the Worchester Main Line near Beacon ST. and Intervale Road near Mile Post 12.02 beginning March 26, 2021 at 10:00 P.M. and going non-stop through 3:00 A.M. on March 29, 2021 (System File S-2124-K-245/BMWE 52/2021 KLS).**
- (2) The Agreement was further violated when the Carrier failed to comply with the advance notification and conference provisions in connection with the Carrier’s plan to contract out the work referred to in Part (1) above and when it failed to assert good faith efforts to reach an understanding concerning said contracting out as required by Rule 24 of the Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and (2) above, Claimants T. D’Arcy, F. Durant, T. Davidson, J. Eustace, R. Lennox and J. Pratt shall now ‘...be fully compensated all hours worked by contractor employees, to be divided equally and proportionately amongst all Claimants as their applicable claimed**

rates of pay (including overtime and double time) as well as all credits for vacation and all other benefits for their lost work opportunity.***”

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.

Factual Background

Claimants T. D’Arcy, F. Durant, T. Davidson, J. Eustace, R. Lennox and J. Pratt have seniority in the Carrier’s Maintenance of Way and Structures Department, and on the relevant dates pertaining to this claim, were assigned and working their respective positions.

On July 1, 2014, the Carrier contracted with Massachusetts Bay Transportation Authority (“MBTA”), a separate entity from Carrier, to operate and maintain commuter rail service. The MBTA owns the commuter rail property, infrastructure, rolling stock and other equipment the Carrier uses to operate the commuter rail service. MBTA retains the right, as owner, to perform work and bid out work on its property in the same locations where the Carrier functions.

If the MBTA requests the Carrier to perform any work on its property, it does so under the terms of Schedule 9, Part 1 of the Operating Agreement between the Carrier and MBTA which states:

The [Carrier] shall perform any Services not otherwise required in this Agreement, when and as directed in writing by the MBTA, subject to the provisions of Section 4 (Emergency Supplemental Work) of this Schedule

9 (Supplemental Work), such written direction to contain particular reference to this Schedule 9 (Supplemental Work) and to designate the work to be done as Supplemental Work.

On March 26, 2021, Barletta Heavy Construction (“BHC”) employees were observed performing Maintenance of Way Department work, removing and replacing approximately 200 feet of track using equipment ordinarily used by Organization members employed by the Carrier. This work was performed on the Worcester Main Line near Bacon Street and Interval Road near Mile Post 12.02. BHC is a separate entity not affiliated with the Carrier.

Position of Organization

The Organization claims that the Carrier retained BHC to perform the work at issue. The Organization maintains that the Carrier’s retention of BHC as contractor violates Rules, 1, 5, 7, 11 and particularly 24 of the Parties’ Agreement. Rule 24 requires that the Carrier notify the General Chairman fifteen (15) days prior to the date of retaining a contractor. The Organization asserts that at no time did the Carrier notify the Organization of its intention to contract out this work and seeks contractual remedies for the Carrier’s failure to comply with the Rules cited above.

Carrier’s Position

The Carrier denies that it violated Rules 1, 5, 7, 11 or 24. The Carrier maintains that MBTA, as owner of the rail property, retained BHC to perform the work at issue.

Analysis

This is a rules case. For that reason, the Organization has the burden of proving its case by a preponderance of the evidence. Generally, in rules cases, the Board will examine the facts brought forward by the Organization and compare and analyze those facts against the relevant agreement provisions at issue.

The burden was on the Organization to prove that the work performed by BHC was under the Carrier’s scope and authority. There is no evidence that the Carrier was under contract with MBTA to perform the work at issue. The Operating Agreement between the Carrier and the MBTA requires that any supplemental work to be performed by the Carrier on MTBA property must be agreed to by MBTA in writing. The Organization did not produce any documentation authorizing the Carrier to either perform the work in question or retain BHC to perform the work in question.

The Board thoroughly reviewed all the evidence submitted by the Organization and finds no evidence to support its claims.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimants not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of December 2024.