

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45627
Docket No. MW-48346
26-3-NRAB-00003-240007

The Third Division consisted of the regular members and in addition Referee Michael Capone when award was rendered.

(Brotherhood of Maintenance of Way Employes Division –
(IBT Rail Conference

PARTIES TO DISPUTE: (

(Soo Line Railroad Company (former Chicago, Milwaukee,
(St. Paul and Pacific Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Class 1 Professionals and/or their subcontractor J. Avenue Development, Hulcher Services, Inc. and Stennes Excavation) to perform routine Maintenance of Way and Structures Department work [including, but not limited to, the removal and relocation of two (2) switches and track panels and staging them for dismantling, grading work, removal of track spoils, ballast work and preparation and installation of two (2) new switches and track panels] in the vicinity of Mile Post 13.26 in Franklin Park, Illinois at the east end of Bensenville Yard near B-12 on December 2 and 3, 2020 (System File C-110-20-080-65/2021-00020205 CMP).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairperson with proper advance written notice of its intent to contract out said work referred to in Part (1) above and when it failed to enter into good-faith discussions to reduce the use of contractors and increase the use of Maintenance of Way forces as required by Rule 1 and Appendix I.

- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants J. Krueger, K. Rutkowski, M. Kendall, M. Radke, D. Mesick, R. Heald, J. Hurtis, K. Kruser, T. Wendler, J. Stoeckly, B. Howe, D. Bryant, D. Taylor, D. Shoopman, R. Strauss, B. Clemmons, J. Wahlen and S. Wolter shall now be allowed “*** a proportionate share each of one hundred sixty-four and one-half (164-1/2) hours straight time and seventy-two and one-half (72-1/2) hours overtime at their applicable straight time and overtime rates of pay for all wages, benefits, and work opportunities lost on December 2 and 3, 2020, as a result of the Carrier assigning recognized and contractually approved maintenance of way work to be performed by outside contractors and their employees who possess absolutely no seniority or other contractual rights under the Schedule of Rules Agreement.”

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 brings this claim asserting that the Carrier violated the Agreement when on December 2 and 3, 2020, it assigned a third-party contractor to perform routine work customarily and historically provided by employees in the Maintenance of Way and Structures Department work, as described in paragraph (1) of the Statement of Claim. It maintains that the work performed by the non-agreement contractor employees is reserved to the Carrier's employees as provided for in Rule 1 - Scope, Rule 4 - Department Limits, Rule 5 - Seniority Limits, Rule 46 - Classification of the Agreement, and Appendix I (Letter of Agreement, December 11, 1981).

The Organization claims the Carrier committed a procedural error as described in paragraph (2) of the Statement of Claim when it did not provide proper notice to the Organization of the contracting out of work as required by the “Note” to Rule 1, which it asserts is identical to Article IV of the May 17, 1968 National Agreement. It also argues that the Carrier has not made a good faith effort to reduce subcontracting or to buy or lease specialized equipment instead of giving the work to third parties.

During oral argument before the Board, the Organization argued that the Carrier attached documents not presented during the on-property handling of the dispute to its written submission. It specifically cited the contracting out notice 2019-0073, dated October 14, 2019, as being improperly attached to the submission and that the notice of intent produced on the property was for a different project.

The Carrier claims it provided the Organization with proper notice of the work assigned to the outside work force when it issued notice 2019-0073 and complied with Rule 1 by conferencing with the Organization on October 29, 2019. It argues that it provided the Board with the contracting out notice by reference in the on-property correspondence between the parties. The Carrier argues that the incorrect notice attached to its written reply, dated June 4, 2021, was a clerical error.

The Carrier asserts that during the conference, it explained the contracting out of the work was necessary due to the specialized machinery needed “to remove the old turnouts/panels and install new turnouts.” The Carrier claims it does not own this equipment and that the Claimants do not possess the required work skills to operate the large excavators. The Carrier maintains the Agreement does not prohibit it from using third party resources, even where the type of work is customarily performed by its employees, and that it complied with the meaning and intent of the applicable contracting out provisions.

We first address the issue of the whether it was improper for the Carrier to attach the contracting out notice – 2019-0073 – to its written submission and find the exhibit is not properly before the Board. The document was not made part of the on-property record and therefore cannot be considered as supporting documentation. The National Railroad Adjustment Board (“NRAB”) Uniform Rules of Procedure dated September 19, 2023, paragraph (9), in relevant part, states, “Any and all Submissions, including Exhibits, . . . and the like that are filed with the Board must

be furnished to the Board pursuant to the current NRAB Instructions Sheet.” The NRAB Instruction Sheet, Section C, paragraph (5), Position of Carrier, dated October 1, 2023, in relevant part, states, “All data submitted in support of the Carrier's position must affirmatively show the same to have been presented to the employees or duly authorized representative thereof during handling on the property.”

The notice of intent to contract out the work was not made part of the record and therefore, constitutes a procedural error. The record is rendered defective where there is a lack of documentary evidence to support a material assertion. While the record indicates the notice – 2019-0073 – was discussed with the Organization, there is no evidence that the on-property correspondence contained the notice. The record does not contain documented justification for the Carrier's assertion that specialized equipment and contractors were necessary to complete the work. As such, we find no support for the Carrier's assertion that proper notice was provided. As noted above, the notice attached to the Carrier's submission is not acceptable to the Board as it was not properly reproduced in the record. The Board does not reach the merits of the dispute.

We move to a review of the remedy requested and find it to be unacceptable. The proper remedy shall be determined as follows:

1. The parties shall perform a joint review of the record to determine the total amount of hours worked by contractor's employees on December 2 and 3, 2020, at the location identified in notice 2019-0073.
2. The Claimants shall be compensated a proportionate share of the total hours worked at the applicable straight time rate of pay irrespective of their work assignment on those days. The claim for overtime pay is denied except where there is evidence that a Claimant would have earned overtime if assigned to work on December 2 or 3, 2020, at the location identified in notice 2019-0073.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 20th day of March 2026.