

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45628
Docket No. MW-48353
26-3-NRAB-00003-240014

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 (Strupp Construction, Inc.) to perform routine Maintenance of Way and Structures Department work (including, but not limited to, laying down erosion control matting, distribution of aggregate over the matting and general grading) in the vicinity between Mile Post 187.0 and Mile Post 192.0 on the Lewiston Siding on the Tomah Subdivision on November 15, 16 and 17, 2021 (System File C-02-22-080-02/2022-00026154 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 K. Rutkowski, J. Hurtis and M. Kendall shall now **** be allowed a proportionate share EACH of eighty-eight and one-half (88.5) hours at their applicable straight-time and/or

overtime rates of pay, along with all benefits and work opportunities lost on November 15, 16, and 17, 2021.’ (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.

The Organization brings this claim asserting that the Carrier violated the Agreement when on November 15, 16, and 17, 2021, it assigned a third-party contractor to perform routine work customarily and historically provided by employees in the Maintenance of Way and Structures Department, 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, 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 record provides substantial evidence that the Carrier’s employees have used its equipment to perform the same and similar work described in paragraph (1) of the Statement of Claim.

The Carrier claims it was not required to provide notice that it was using third party forces to perform the work described in the Statement of Claim since the

contractor was not performing work that falls within the scope of the Agreement as provided for in Rule 1 – Scope. It avers the Organization did not meet its burden of proof that the Carrier’s employees have historically performed slope remediation.

The Board first addresses the Organization’s allegation that the Carrier committed a fatal procedural error when it failed to provide proper notice of its intention to subcontract work to a third party. We find that the Organization has met its burden of proof that proper notice was not provided in violation of the Agreement. Appendix I and the “Note” to Rule 1 specifically requires that “the Carrier shall notify the General Chairman in writing” of its intent to subcontract work. The Organization provided numerous documents indicating the work performed by the contractors has been performed by the Carrier’s employees which renders such work within the scope of the Agreement. The Carrier provides no support for its assertion that the work has been exclusively performed by outside forces to the exclusion of its own employees. As such, we find the Carrier violated the Agreement, as alleged in paragraph (2) of the Statement of Claim and therefore, we do 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 November 15, 16, and 17, 2021, at the location identified in paragraph (1) of the Statement of Claim.
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 November 15, 16, and 17, 2021, at the location described in paragraph (1) of the Statement of Claim.

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.