

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45629
Docket No. MW-48356
26-3-NRAB-00003-240017

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 Professional Services Inc.) to perform routine Maintenance of Way and Structures Department work (including, but not limited to, loading/unloading of track switch panels onto trucks and relocation of track switch panels) within Bensenville Yard in the vicinity between Mile Post 14 and Mile Post 16 on the Elgin Subdivision on April 26, 2022 (System File C-40-22-080-14/2022-00028779 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, K. Kruser, D. Bryant, B. Howe, J. Krueger, and T. Wendler shall now ‘*** be allowed a proportionate share EACH of sixty (60) hours at their applicable straight time and/or overtime rates of pay, along with all benefits and work opportunities lost on April 26, 2022.’ (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 April 26, 2022 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 contractor's non-agreement employees is reserved to the Claimants 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 Carrier has not made a good faith effort to reduce subcontracting or to buy or lease equipment instead of giving the work to third parties.

The Carrier claims it provided the Organization with proper notice of the work assigned to the outside work force by issuing notice 2021-0050 and complied with Rule 1 when it conferenced with the Organization regarding the subcontracting. The Carrier asserts that during the conference, it explained the contracting out of the work was necessary due to the weight and length of the switch panels and that a "large, extendable flatbed truck/trailer combination was required" for transporting the materials. It also claimed the Claimants do not

possess the “special training and experience” needed, and the equipment required is not owned by the Carrier. 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.

The Organization’s allegation, as stated in paragraph (2) of the Statement of Claim, that the Carrier did not provide proper notice of its plan to subcontract work is contradicted by the record. There are numerous references to the notice being provided. The on-property correspondence between the parties indicates it was received, but that the Organization argued it was not sufficient.

The second part of paragraph (2) claims the Carrier did not engage in “good-faith discussions to reduce the use of contractors”. However, the parties met in conference to discuss the project described in the notice. The record does not contain evidence that the Carrier refused to consider leased equipment or that the discussions were not held in good faith. To the contrary, the Carrier’s letter, dated July 21, 2022, indicates that it leased equipment to perform some of the work on the same project where its employees were capable of using such equipment. The on-property record indicates the Carrier provided the Organization with its reasoning to contract out the work. The Organization produces no relevant or factual basis to support its claim that the Carrier was acting in bad faith or in violation of the applicable rules.

Well established arbitral precedent requires the Organization to produce substantial evidence to support its assertions. We do not find such support for its allegations. The plethora of arbitral support provided by the Organization is significantly distinguishable from the facts presented here. Most of the Awards indicate that in those cases the carrier failed to provide notice before contracting out the work.

In accordance with Article IV, Contracting Out, and where an agreement was not reached between the parties to assign the project to the Claimants, the Carrier exercised its contractual right to subcontract the work. The record is devoid of any evidence that the Carrier had the necessary equipment, or that it was reasonable to rent the machinery, where the Claimants did not have the experience or skills to operate the equipment. The two employee statements submitted by the Organization describe the equipment they have used but neither confirm that they have operated the same equipment used by the contractor.

The Organization's assertion that the Carrier does not provide proper training for employees to operate the equipment used by the contractor undermines the notion that the Claimants were capable of doing so. Moreover, nothing in the Agreement requires the Carrier to provide such training.

The relevant contract language indicates the parties came to an understanding that there would be efforts to reduce subcontracting. A review of Appendix I indicates the parties agreed to establish a committee ". . . to continue discussions on these subjects for the purpose of developing mutually acceptable recommendations that would permit greater work opportunities for maintenance of way employees . . ." However, the record does not provide evidence that the parties have developed any mechanisms to reduce subcontracting or to "make a good faith attempt to reach an understanding" as provided for in the "Note" to Rule 1, Scope. Moreover, Rule 1 expressly states ". . . if no understanding is reached the Carrier may nevertheless proceed with said contracting, and the Organization may file and progress claims. . .". Without any recommendations from the "Committee" in the record to reduce subcontracting, the Board cannot find that specific criteria have been established to reduce subcontracting.

The Organization asks the Board to interpret arbitral awards to support its proposition that the Carrier improperly subcontracted work. However, arbitral precedent is viewed as persuasive argument and not substantial evidence. Nor do prior awards have a binding effect on subsequent disputes. Moreover, the Board cannot adopt findings from the cited Awards, which presumably contained substantial evidence that a carrier improperly outsourced work, where no such evidence is verified in the record here. To do so would be to impose new subcontracting rules on the parties, which is not within the Board's jurisdiction.

It is well established by arbitral doctrine and canons of contract interpretation that a neutral cannot add, delete, or modify terms of an agreement. The unambiguous language in the "Note" to Rule 1 reads as follows:

* * *

Nothing in this Note shall affect the existing rights of either party in connection with contracting out. Its purpose is to require the Carrier to give advance notice and, if requested, to meet with the General Chairman or his representative to discuss and, if possible, reach an understanding in connection therewith. (See Appendix I)

* * *

The provision is limited to “advance notice” and a meeting between the parties to “if possible, reach an understanding”. Lastly, the Organization does not provide sufficient evidence to establish that the Carrier has not made efforts to reduce the use of outside contractors as noted in Appendix I or that it hires third parties on a regular basis. There is no data to support its contention.

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 20th day of March 2026.