

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 45632  
Docket No. MW-48383  
26-3-NRAB-00003-240105

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 (Davey Tree Service) to perform routine Maintenance of Way and Structures Department work (cutting brush, limbs and trees along the Carrier right of way) at numerous locations between Mile Posts 306 and 308 on the River Subdivision beginning on July 26, 2022 and continuing through July 29, 2022 (System File C-69-22-080-25/2022-0030618 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 the work and failed to enter 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 L. Radsek, P. Pawlenty, D. Fogel and M. Radke shall now be compensated ‘\*\*\* a proportionate share EACH of one hundred two (102) hours at their applicable straight time and/or overtime rates of pay, along with all benefits and work opportunities lost on Beginning on July 26, 2022 and continuing through July 29, 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 during the period of July 26 through July 29, 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 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 alleges that the Carrier did not apply the requirements of Appendix I which describes the Carrier's good faith efforts to reduce the amount of work it subcontracts.

The Carrier claims it provided the notice and held a conference as required by Rule 1 – Scope. It avers that the Claimant did not have the experience and skill to perform the work, and that the contractor was assisting in expediting the necessary brush cutting efforts along the right-of-way.

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.

A review of the record confirms that a notice to subcontract work was not provided to the Organization during the on-property handling of the dispute. Appendix I and the "Note" to Rule 1 specifically requires that "the Carrier shall notify the General Chairman in writing" to subcontract work. 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 between July 26 and July 29, 2022, at the locations 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 between July 26 and 29, 2022, at the locations 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.**