

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45635
Docket No. MW-48343
26-3-NRAB-00003-240004

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

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

PARTIES TO DISPUTE: (

(Soo Line Railroad 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’s right of way between Mile Posts 39.0 and 120.0 on the Paynesville Subdivision beginning on March 10, 2020 and continuing through April 16, 2020 (System File C-16-20-080-05/2020-00014437 SOO).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairperson with proper advance 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 O.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants B. Jenneman, A. Olson, M. Peterson and J. Sanders shall now be allowed ‘... a proportionate share each of eight hundred sixty-four (864) hours at their applicable straight time and/or overtime rates of pay for all time, benefits, and work opportunities lost and to which they were entitled by virtue of their seniority rights and regular assignment beginning March 10, 2020 and continuing through April 16, 2020 - but which they were denied when the Carrier violated the agreement as set forth herein.”

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 record establishes that the claim was properly presented by the Organization and advanced through all stages of claim processing up to and including the Carrier's Highest Designated Officer ("HDO"). The claim is before the Board for a final decision.

The dispute centers on whether the Carrier violated the Agreement when it contracted out scope-covered work beginning March 10, 2020 and continuing through April 16, 2020. There is no dispute that the claimed work is covered by general-scope Rule 1, is work customarily performed by the force and was performed between Mile Posts 39.0 and 120.0 on the Paynesville Subdivision by a contractor.

Rule 1 states the parties' intent to preserve work for the force. While the parties agreed to express their intent to preserve work under a general-scope rule for the force, the Agreement does not prohibit contracting out. When outsourcing work the Carrier must comply with protocols and requirements set forth in Rule 1 and Appendix O such as advance notice to the BMWED.

The record shows the Carrier issued an advance notice — pre-contracting out notice 2020-0007 — dated January 27, 2020. The notice identified and described the where and when work would be performed across sixteen (16) subdivisions and included reasons for contracting which were special equipment (Skyline Brush Cutters and longer reach boom cutters), special skills required to operate special equipment and time to complete this short-term project on an expedited basis. The notice is adequate to alert the General Chairperson that contracting-out is planned to occur at various times during calendar year 2020 and identified reasons for outsourcing scope-covered work.

On February 5, 2020 the parties met in conference. The BMWED's position, in summary manner, was the force traditionally performs brush removal and is prepared and skilled to perform this work using Carrier equipment (owned or rented). The parties reached no understandings at conference; they exchanged post-conference letters on April 28, 2020 and May 5, 2020 whereas the claimed work was completed on April 16, 2020.

According to the BMWED the Carrier did not engage in good-faith discussions to reduce the incidence of subcontracting and increase the use of the force. This is shown, BMWED states, by the Carrier assigning Maintenance of Way work that the force is qualified to perform to a contractor in violation of Rule 1. No special equipment or special skills were required for the work. Time was not of the essence; the project started a month after the tentative start date. The Carrier states its intent to use the force for this work but seeks to complement it with an outside force during peak operational times.

To attain compliance with the Agreement when contracting-out, the Carrier must establish at least one (1) of the five (5) criteria in Rule 1 and comply with Appendix O. The criteria are special skills, special equipment, special material, time requirements or emergency. The Carrier cites special equipment and special skills to operate Skyline boom cutters and longer reach boom cutters as necessary for completing brush removal expeditiously and more thoroughly than spraying for brush control. The special equipment's capabilities and maneuverability are differentiating features in support of the Carrier's position. The Board finds the Carrier established special equipment and special skills in Rule 1 and complied with Appendix O notwithstanding no mutual understandings reached. Given these findings, the Board denies the claim.

In denying the claim the Board has considered all arguments, evidence and awards in the record.

AWARD

Claim denied.

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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.