

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45636
Docket No. MW-48344
26-3-NRAB-00003-240005

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 (Stennes Excavating, LLC) to perform routine Maintenance of Way and Structures Department work (dirt work, removal of switch panels, placement of rail panels, distribution of ballast and general grading/cleanup of the worksite) in the vicinity of Mile Post 252.9 and Mile Post 253.8 on the Detroit Lakes Subdivision, beginning March 17, 2020 and continuing through April 2, 2020 (System File C-19-20-080-07/2020-00014677 SOO).
- (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 O.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants M. Evje, C. Winkler, S. Lundon, J. Soma, M. Watercott and A. Haverkamp shall now “*** be allowed a proportionate share each of three hundred seven (307) hours at their applicable straight time and/or overtime rates of pay for all wages, benefits, and work opportunities lost beginning on March 17, 2020 and continuing through April 2, 2020.”

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 before the Board 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"). Part 1 and Part 2 in the Statement of Claim describe the dispute, that is, whether the Carrier violated the Agreement when it contracted out scope-covered work. There is no dispute that the work was performed by an outside force at the location and dates cited by BMWED and there is no dispute such work is covered by general scope Rule 1 and has been traditionally and customarily performed by the force.

The protocol and requirements for contracting out scope covered work are well-established and set forth in Rule 1 and Appendix O. The record shows the Carrier issued advance notice - - notice 2019-0071 - - dated October 14, 2019 stating that the project which began in 2018 as referenced in notice 20018-0057 and would be completed by the second quarter 2020.

The Board finds notice 2019-0071 is adequate for Rule 1. It identified the date when the work was anticipated to begin and where it would occur - - Marsh Creek siding west. The notice states "CPR forces will be performing the majority of work but a contractor is required with specialized equipment and expertise."

On October 29, 2019 the parties convened in conference. The Organization disputed the rationale and necessity for an outside force stating the BMWED force is capable of performing all of the work. BMWED states the Carrier did not engage in good faith discussions to reduce the incidence of contracting and increase the use of the force.

In assessing the record, the Board finds the larger equipment used by outside force is needed due to the weight and size of the track material installed and removed. The larger equipment and its capabilities to handle the weight and size of the track panel removals and installation makes it special equipment. The Organization's rebuttal to special equipment — use Carrier equipment — is noted but unpersuasive for the Carrier's equipment is smaller in size and capabilities. The Carrier satisfied the criteria in Rule 1 for contracting out within the agreed-upon parameters in the Agreement.

The burden of proof resides with the BMWWE in this proceeding. Based on the probative and relevant evidence in the record, the Board finds the Organization did not establish its alleged violations in Parts (1) and (2) of the claim. Thus, the claim will be denied.

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

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.