

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 45637  
Docket No. MW-48347  
26-3-NRAB-00003-240008

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 (Elite Rail Services LLC) to perform routine Maintenance of Way and Structures Department work (including, but not limited to, the removal of rail, tie removal, loading and hauling of rail and ties to a disposal site, general cleanup of the worksite and grading the roadbed) in the vicinity of Mile Posts 119.0 and 120.0 in Glenwood Yard on the Paynesville and Elbow Lake Subdivisions beginning July 13, 2021 and continuing (System File C-68-21-080-30/2021-00024348 SOO).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper advance written notice of its intent to contract out said work and 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 D. Picotte, R. Beveridge, M. Carlson, E. Runquist, A. Lanoue, P. Anderson, L. Chalich, J. Popp, F. Staples and T. Winter shall now be allowed “\*\*\* a proportionate share each of all straight time and/or overtime at their applicable 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 assignments – but which they were denied beginning July 13, 2021 and continuing through September 20, 2021.”

**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 a claim was presented by the Organization and advanced through all stages of on-property claim processing up to and including the Carrier’s Highest Designated Officer (“HDO”). On June 22, 2023 the parties met in conference but reached no understandings.

The gravamen of the dispute is whether the Agreement was violated when the work described in Part 1 of the claim was performed by an outside force. The claimed work has been performed by the force for decades and is subject to general scope Rule 1. There is no dispute the claimed work was performed by an outside force. Also undisputed is the Carrier did not issue a pre-contract out notice to the General Chairperson.

According to the Carrier, it sold scrap materials to a contractor and the contractor used its trucks to remove the materials from the Carrier’s property. Although the force assisted with loading the scrap materials on the contractor’s vehicles, the Carrier states the material was sold in place by the Carrier and the contractor purchased it in an “as is where is” transaction. The Carrier’s position is the act of driving contractor vehicles and unloading the scrap material on contractor property is not BMWED work.

A review of the record shows the Carrier did not disclose the “as is where is” contract. This non-disclosure, even of a redacted copy excluding propriety information, precludes the Board from assessing the scope of the contract in relation to the claim. The non-disclosure is not construed favorably for the Carrier and its position that the undisclosed contract insulates it from violating the Agreement and shows no need or basis for issuing advance notice. Based on the evidentiary record established by the parties, the Board finds a violation of the Agreement by the Carrier. The claim is sustained for straight-time hours beginning July 13, 2021 and continuing up to and including September 20, 2021.

**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.