

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 45639  
Docket No. MW-48349  
26-3-NRAB-00003-240010

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 (including, but limited to, relocation of ballast stockpiles, distribution of gravel and grading roadways along the tracks) in the vicinity of Glenwood Yard on the Elbow Lake and Paynesville Subdivisions beginning on May 10, 2021 and continuing through May 14, 2021 (System File C-45-21-080-14/2021-00023417 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 F. Staples, M. Evje and R. Beveridge shall now “\*\*\* be allowed a proportionate share EACH of one hundred (100) hours at their straight-time and/or overtime rates of pay, along with all benefits and work opportunities lost on May 10, 2021 and continuing through May 14, 2021.’ (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 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").

The dispute centers on whether the Carrier violated the Agreement when it contracted out scope-covered work beginning May 10, 2021 and continuing through May 14, 2021. There is no dispute that the claimed work (i) is covered by general-scope Rule 1, (ii) customarily performed by the force and (iii) was performed by an outside force on the Elbow Lake and Paynesville Subdivisions in the vicinity of Glenwood Yard.

The Agreement does not prohibit contracting out; however, protocols and requirements when outsourcing scope covered work are well-established and set forth in Rule 1 and Appendix O. The record shows the Carrier issued an advance notice — pre-contacting out notice 2021-0032 — dated April 14, 2021. The notice adequately identified where and when the work would be performed along with reasons for contracting which were special equipment and special skills. The notice is adequate. The BMWED's position in conference on May 6, 2021 noted the force is skilled to perform this work using Carrier equipment (owned or rented). The parties reached no understandings at conference.

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 fundamental 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.

To remain compliant 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 parties agreed that two (2) of the five (5) criteria would be described and/or defined with parameters — emergency and special materials. The remaining three (3) criteria — special equipment, special skills, time requirement — are not defined and/or described in similar terms as emergency and special materials. Special equipment not owned by the Carrier and special skills to operate special equipment satisfies Rule 1(c) for subcontracting the claimed work. These matters were discussed during conference without any understandings reached.

In the circumstances presented by the parties in this proceeding, the Board concludes the Carrier did not violate Rule 1 and Appendix O.

**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.