

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45640
Docket No. MW-48350
26-3-NRAB-00003-240011

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 not limited to, work associated with removal/installation of switch and track panels, lining track, relocation of switch and track panels, removal of track spoils, leveling grade, distribution of ballast, loading and hauling ties and distribution of track spoils and grading them into the road) at Rice’s Point on the Merriam Park Subdivision, starting on August 30, 2021 and continuing through September 20, 2021 (System File C-89-21-080-45/2021-00025060 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 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, D. Ewert, T. Weime, J. Soma, M. Watercott, M. Nichols, A. Olson and J. Wampach shall now ‘*** be allowed a proportionate share EACH of three hundred fifty-six (356) at their applicable straight time and/or overtime rates of pay, along with all benefits and work

opportunities lost beginning August 30, 2021 and continuing through September 20, 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”). Part 1 of the Claim describes the dispute, that is, whether the Carrier violated the Agreement when it contracted out scope-covered work. There is no dispute the claimed work is covered by the general-scope Rule 1 and customarily performed by the force and there is no dispute the work was performed by an outside 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 2019-0009 on January 22, 2021 identifying the contracting-out project to begin March 1, 2021 for lifting turnouts/track panels and other work described in Part 1 of the claim. The notice stated reasons for outsourcing such as special equipment not owned by the Carrier and special skills not possessed by the force. Another reason was adding manpower was not cost effective for this project with a short term.

The Board finds notice 2019-0009 is adequate for Rule 1. It identified the date when the work was anticipated to begin, where it would occur and reasons for contracting. The notice is detailed with locations and subdivisions.

During claim processing and conference on February 11, 2021 the Organization disputed the rationale and necessity for an outside force stating the BMW force is

capable of performing all work and the Carrier could rent equipment. BMW 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 large excavator equipment used by the outside force appropriate due to the weight and length 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 establishes it as special equipment; the large dozer performed grading work. The Organization's rebuttal to special equipment and special skills — use Carrier equipment and rent equipment for the force which is qualified to handle all this work and skilled to operate special equipment — is noted but Rule 1 provides for contracting when special skills and special equipment are established as occurred in this proceeding. Discussions at conference focused on Rule 1 reasons for contracting and Appendix O but no agreements or understandings were reached. According to the Carrier, the BMW force completed all of the install with the outside force helping with lifting/removing material and setting new material.

The Board finds that the Carrier established the Rule 1 criteria for contracting out with special equipment, special skills and, in doing so, complied with the Agreement and Appendix O. 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 Organization's 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.