

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45642
Docket No. MW-48352
26-3-NRAB-00003-240013

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 (RV Enterprises) to perform routine Maintenance of Way and Structures Department work (including, but not limited to, work associated with removal/installation of track and switch panels at road grade crossings, relocation of switch panels, removal of track spoils, distribution of ballast and grading) in the vicinity of Mile Post 530.5 and Mile Post 531.3 in Bowbells, North Dakota on the Portal Subdivision on November 2 and 4, 2021 (System File C-109-21-080-57/2021-00025972 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 the 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 C. Winkler, D. Ewert, M. Nichols, B. Jenneman, M. Peterson and M. Evje shall now ‘... be allowed a proportionate share EACH of one hundred twenty-three (123) at their applicable straight and/or overtime rates of pay, along with all benefits and work opportunities lost November 2 and 4, 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.

On January 22, 2021 the Carrier issued notice 2021-0009a stating its intent to contract for crossing, diamond, and turnout installations at multiple locations across subdivisions along the Carrier's right-of-way during calendar year 2021. At crossings and turnouts, the notice described the outsourced work at "the following locations - MP 530.94 PORT Subdivision [w]ill need 3 excavators for 160' track panel and dozer for grading" and "2 Turnout Installations between MP 530-531 PORT Subdivision - will need 3 Excavators for lifting out the old turnout then lifting the new turnout into position, and dozer for grading" with a "[t]entative completion August."

The notice states "[r]easons for contracting out" as special equipment not owned by the Carrier or cost effective to purchase" with the contractor providing and using the special equipment" and "time requirements must be met which are beyond the capabilities of Company forces to meet."

On February 11, 2021 the parties met in conference. BMWED's post-conference letter dated February 16, 2021 stated the Carrier's "blanket notice did not provide the detailed information required for such notices" under the Agreement, e.g., time and place and reasons for outsourced work. Also, the Carrier did not satisfy Appendix O as it did not make a good-faith effort to reach an understanding for the claimed work that "belongs to Carrier's MOW employees" but was performed by three (3) to six (6) contract workers. The Carrier's post-conference letter dated February 18, 2021 stated "these contractors have the specialized equipment and technical expertise to operate" it. BMWED employees "would be working with and providing protection as needed when the equipment is on property" with BMWED forces "completing all of the install, and the contractors would be helping with the lifting out the material and setting in the

new material.” The force is not trained to operate this larger equipment required for the work due to the size and weight of the material. The Carrier states the notice and conference were undertaken in good faith.

The parties reached no understandings in conference whereupon the Carrier proceeded to outsource the claimed work and the Organization filed its claim dated December 29, 2021. The record shows 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. Parts 1 and 2 in the Statement of Claim describe the dispute, that is, whether the Carrier violated the Agreement when it contracted out scope-covered work.

The protocol and requirements for contracting-out scope-covered work are well-established and set forth in Rule 1 and Appendix O. That is, when the Carrier intends to outsource work covered by general scope Rule 1, it must issue advance notice that includes, among other details, reasons for contracting, meet in conference upon request and engage in good-faith discussions to reduce subcontracting and increase the use of the force “to the extent practicable” such as procuring rental equipment for the force to use. The Carrier must establish at least one (1) of five (5) criteria in Rule 1(c) for contracting out scope-covered work and comply with Appendix O.

On-property exchanges and ex parte submissions reflect the parties’ differences. The Carrier stating “due to the weight and length of the track crossing panel being removed and installed and the 2 switch panels that were removed and replaced, large excavators were necessary to perform the lifting of the panels. Such equipment requires specialized training and experience, none of which the Organization employees possessed. This was discussed in detail during the pre-contracting out conference. Additionally, the removal of spoils were part of the grading work that was scoped as part of the project and notice to contract was submitted for the grading work[.]” BMWED states the Carrier does not engage in good-faith discussions because it presents a “done deal” to contract out work that belongs to the force. This is contrary to Appendix O where the Carrier is required to “assert good faith efforts to reduce the incidence of subcontracting and increase the use of Maintenance of Way forces to the extent practicable including the procurement of rental equipment and operation by the [force].” No special equipment was needed; the Carrier owns dozers and excavators among other equipment. Since the work belongs to the BMWED the Carrier has the responsibility to train and equip the force to perform the work.

Having considered the competing arguments, the Board finds the Carrier issued an adequate advance notice of its intent to contract out. The notice describes in sufficient detail the outsourced work including MP locations within subdivisions on the Carrier's right-of-way where the work will occur. The notice defines the parameters with dates/times when the work starts and concludes. The notice includes reasons for contracting out which the Carrier established as specialized equipment and special skills to operate special equipment among others reasons.

The Carrier satisfied Rule 1(c) contracting out criteria — specialized equipment and skills required for this work due to the weight, size and length of the materials. The 5 reasons for contracting-out that the parties agreed to in Rule 1(c) are the dispositive bases for determining whether the Carrier complied with the Agreement. Reasons for contracting out advanced by the Carrier which are not contained in Rule 1(c) are not dispositive. During conference the Carrier identified work that the force would perform on this project, that is, working with the outside force. Based on these findings the Board concludes the Carrier complied with the Agreement's Rule 1 and Appendix O for contracting out scope-covered work. The Board will deny the claim.

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.