

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45644
Docket No. MW-48355
26-3-NRAB-00003-240016

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) to perform routine Maintenance of Way and Structures Department work (including, but not limited to, snow removal) in the vicinity between Mile Post 145.6 and Mile Post 198.5 on the Elbow Lake Subdivision beginning on January 20, 2022 and continuing through February 3, 2022 (System File C-17-22-080-05/2022-00027605 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, Claimant M. Carlson shall now be allowed “*** sixty-four (64) hours at his applicable straight-time rate of pay, along with all benefits and work opportunities lost beginning on January 20, 2022 and continuing through February 3, 2022.”

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 March 18, 2022 the Organization filed a claim alleging the Carrier violated the Agreement's Rules 1, 2, 3, 4, 6 and Appendix O when an outside force performed snow removal at locations and dates described in Part 1 of the claim. No special equipment was used to perform the work which the force has performed for decades and was available to perform on the claim dates. The Carrier failed to make a good-faith effort to use the force and reduce the incidence of outsourcing work.

On May 9, 2022 the Carrier denied the claim stating it "has no knowledge of any contractor working to remove snow for the E/S Department in the locations claimed during the dates provided in this claim."

On July 8, 2022 the BMWED appealed the claim denial to the Carrier's Highest Designated Officer ("HDO") stating the Carrier does not "dispute the Organization's claim that the Carrier improperly directed employees to perform work outside their seniority district, as laid out in the initial claim." The written statement by the Signal Foreman, an employee of the Carrier and not a party to this claim, confirms that he provided on-track protection while the contract worker removed snow using a skid steer.

On September 1, 2022 the HDO denied the appeal stating the Organization failed to carry its burden of proof on the alleged rules violations. Notwithstanding unproven allegations, the HDO states "[t]he snow removal in question was done for the Signals department and the Signal employee provided the protection . . . snow removal is not

owned solely by BMWED” as “[o]ther groups, including signals and mechanical are responsible for removing snow in connection to their duties.” There is no language “outlining seniority provision for snow removal” in the Agreement. HDO: “all seniority groups move snow in connection with their scope provided duties” and no “single group, class or sub department . . . owns snow removal.” BMWED acknowledged that snow was removed to enable the Signals Department to access crossing and signal sites. “There was no requirement for the [Carrier] to provide notice of the contracting out as the Organization alleges.”

On June 22, 2023 the parties convened in conference but no understandings or resolutions were attained whereupon the claim and appeal were advanced to the Board on October 3, 2023.

In this contracting-out claim the BMWED seeks compensation for snow removal work performed by a contractor at track crossings and signal sites. BMWED does not seek compensation for work performed by signal or other craft employees. Sixty-four (64) hours expended removing snow shows it was not incidental work. There is no dispute that a contractor performed snow removal at crossings and signal sites using a skid steer on the dates and locations set forth in the claim. This work has been customarily and historically performed by the force for decades under general scope Rule 1. To contract out scope-covered work, requirements and protocols in Rule 1 and Appendix O must be met such as, among other matters, issuing advance notice. The Carrier did not issue advance notice which violates Rule 1. Given these findings drawn from the circumstances presented, the claim is sustained.

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.