

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 45645  
Docket No. MW-48357  
26-3-NRAB-00003-240018

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 (Davey Tree Service) to perform routine Maintenance of Way and Structures Department work (cutting brush, limbs and trees along the Carrier’s right of way) on the Paynesville, MN&S and Elbow Lake Subdivisions (as of the claim date) beginning April 18, 2022 and continuing (System File C-42-22-080-15/2022-0028883 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 M. Mannie, B. Jenneman, J. Sanders, T. Anderson, J. Gillen, C. Davis and M. Peterson shall now be allowed “\*\*\* a proportionate share EACH of all at their applicable straight-time and/or overtime 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 April 18, 2022 and continuing.’ (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 Third Division of the Adjustment Board, upon the whole record and all the evidence, finds: (1) 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; (2) this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and (3) the parties to said dispute were given due notice of hearing thereon.

The record establishes that the claim was properly 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"). The claim is before the Board for a final decision.

The gravamen of the dispute is whether the Carrier violated the Agreement when it contracted out scope-covered work (cutting brush, limbs and trees) on April 18, 2022. There is no dispute that the claimed work is covered by general-scope Rule 1 and no dispute that an outside force performed the work on the Paynesville, MN&S and Elbow Lake Subdivisions. The Board finds that the disputed claim in this proceeding is substantively and materially the same as the disputed claim denied in NRAB-00003-240049.

Rule 1 states the parties' intent to preserve work for the BMWED force that it has historically and traditionally performed. While the parties' expressed intent is to preserve work under the general-scope Rule 1 for the force, the Agreement does not expressly prohibit contracting out the work described in Part 1 of the claim; however,

the Carrier must comply with protocols and requirements set forth in Rule 1 and Appendix O such as advance notice to the BMWED.

The record shows the Carrier issued to the General Chairperson an advance written notice — pre-contracting out notice 2021-0006 — dated January 27, 2022. The notice identified and described the work to be performed across sixteen (16) subdivisions, disclosed tentative dates for the work to begin and end and included reasons for contracting which were special equipment (Skyline Brush Cutters, longer reach boom cutters, grinders), special skills required to operate special equipment and time to complete this short-term project on an expedited basis. The notice is adequate to alert the General Chairperson that CPKC is planning to contract-out scope-covered work during calendar year 2020 within certain subdivisions and reasons for contracting. Aside from inviting BMWED for discussion of the notice in conference, the parties disagree whether the Carrier complied with Appendix O.

On February 14, 2022 the parties met in conference. The BMWED's position, in summary manner, was the force traditionally performs brush removal and is prepared and skilled to perform this work using Carrier equipment (owned or rented). Arbitral precedent establishes that the Carrier assigning a fully-deployed force to other work does not render the force unavailable to perform the claimed work. The Carrier's position is it complied with Rule 1 and Appendix O. The parties reached no understandings at conference whereupon the Carrier proceeded to contract out and the BMWED filed its claim.

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 which the force can perform but for the Carrier not assigning the work to BMWED force. The Carrier states its intent to use the force for this work but seeks to complement it with an outside force during peak operational times. The force does not possess special skills to operate special equipment which is not owned by the Carrier.

To attain compliance 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-upon criteria in Rule 1 are special skills, special equipment, special material, time requirements or emergency. Special material and emergency are described within defining parameters whereas special equipment, special skills and time

requirements are not described in limiting terms. The Carrier cites special equipment and special skills to operate Skyline boom cutters, longer reach boom cutters and grinders as necessary for completing brush removal expeditiously and more thoroughly than spraying for brush control. The special equipment's capabilities and maneuverability (longer reach and grinders) are differentiating equipment features in support of the Carrier's position.

The Board finds the Carrier established special equipment and special skills in Rule 1 and complied with Appendix O notwithstanding no mutual understandings reached on renting the special equipment. Based on these findings the 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.