

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45647
Docket No. MW-48359
26-3-NRAB-00003-240027

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, saw cutting asphalt at road grade crossings) in the vicinity between Mile Posts 42 and 48 on the Paynesville Subdivision on May 16 and 22, 2022 (System File C-53-22-080-20/2022-0029546 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 J. Lero and E. Emslander shall now “*** be allowed a proportionate share EACH of twelve (12) hours at their applicable straight time rate of pay, along with all benefits and work opportunities lost on May 16, 2022 and on May 25, 2022.” (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 27, 2022 the Carrier issued notice 2022-0011 stating work to be contracted out for a project involving lifting turnouts/track panels and grade at specified Mile Posts and identified subdivisions starting March 1, 2022 and concluding December 31, 2022. In summary manner reasons for contracting out were the work required special equipment not owned by the Carrier nor was it cost efficient to purchase such equipment. The outside force provides the special equipment and skilled workers to operate it.

On February 14, 2022 the parties convened in conference in an attempt to reach an understanding on work covered by the notice. When the parties did not reach an understanding, the Carrier proceeded to contract with an outside force.

On July 15, 2022 the Organization filed its claim alleging rules violations when the Carrier assigned an outside force to perform scope-covered work such as saw cutting asphalt at road grade crossings in the vicinity between MP 42 and MP 48 on the Paynesville Subdivision on May 22, 2022 and May 25, 2022. No special equipment was used by the contract workers and shows no good-faith efforts during conference to use the force and reduce use of contractors.

On September 8, 2022 the Carrier denied claim stating the advance notice informed the BMWED that contractors would cut and haul away asphalt at Mile Posts 44.46 and 48.2 on the Paynesville Subdivision. The Carrier met the Agreement's requirements for contracting out - - advance notice and conference. The Carrier is not required to piecemeal the project's work.

On November 7, 2022 the Organization appealed the claim denial to the Carrier's Highest Designated Officer ("HDO") noting no good faith effort by the Carrier during conference. The notice was inadequate and Claimants full-time work elsewhere for the Carrier does not render them unavailable.

On January 5, 2023 the HDO denied the appeal relying on the notice and reasons in the first-level claim denial. The HDO stated the BMWED failed to carry its burden of proof as the Carrier did not violate any rules.

The claim alleges violations of Rules, 1, 2, 3, 4, 6 and Appendix O when outside forces performed scope-covered work including, but not limited to, saw cutting asphalt at road grade crossings in the vicinity between Mile Posts 42 and 48 on the Paynesville Subdivision on May 16, 2022 and May 25, 2022. The Carrier's advance notice covered this claimed work in sufficient detail.

The Carrier's reasons for contracting are specialized equipment, not owned by the Carrier, and operation of it requires special skills not possessed by the force. The Carrier states the force cannot meet time constraints of this project. These reasons — special equipment, special skills, time requirements — are criteria in Rule 1(c) for contracting out scope-covered work. The Carrier states the Organization seeks to piecemeal this project. The Carrier is not required to piecemeal some work of the project as Third Division Awards 30633 and 38963 hold that contracted out work is considered as a whole. The Board follows this arbitral precedent and concludes the Carrier was not required to piecemeal the claimed work. Given these findings the claim will be denied.

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.