

PUBLIC LAW BOARD NO. 6399

**CASE NO. 60
AWARD NO. 60**

**Brotherhood of Maintenance of Way Employees
Division - IBT Rail Conference**

and

**Norfolk Southern Railway Company (former
Norfolk & Western Railway Company)**

Claimants: B. Lowe, B. Haney, B. Grider, J. Stephenson, M. McCoy and G. Kupiec

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it assigned outside forces to perform Maintenance of Way and Structures Department work rebuilding a bridge at Mile Post DH508.28 on the Illinois Division, beginning on May 31, 2016 and continuing until this matter is resolved (Carrier’s File MW-DECR-16-102-BB-721 NWR).
2. The Agreement was further violated when the Carrier failed to properly notify the General Chairman, in writing, in advance of its plans to contract out the work referred to in Part 1 above and when it failed to make a good-faith attempt to reduce the incidence of subcontracting and increase the use of its Maintenance of Way forces or reach an understanding concerning such contracting as required by Appendix ‘F’ of the Agreement and the December 11, 1981 National Letter of Agreement.
3. As a consequence of the violations referred to in Parts 1 and/or 2 above, Claimants B. Lowe, B. Haney, B. Grider, J. Stephenson, M. McCoy and G. Kupiec shall now each be paid for all hours worked by the outside forces at their applicable rates of pay.”

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the Carrier and Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended, that the Board has jurisdiction over the dispute involved herein and that the parties were given due notice of hearing thereon.

The Claimants have established and maintain seniority in the Carrier's Maintenance of Way and Structures Department. Specifically, the Claimants were assigned to their respective positions in the Bridge and Building (B&B) Department.

Beginning on May 31, 2016, the Carrier assigned outside forces to perform the work of rebuilding a bridge at Mile Post DH508.28 on the Illinois Division. The outside contractors assisted in the complete removal and replacement of a bridge span at MP DH-508.28.

The Organization filed this claim which was appealed to the highest officer on-property. As the parties were unable to resolve the claim, it is now properly before this Board for final adjudication. By letter dated August 25, 2022, the parties agreed to choose/list this case as "lead case" to dispose of multiple claims relevant to issues centered around this dispute.

The Organization contends that the Carrier violated the controlling Agreement when it assigned outside forces to perform basic Maintenance of Way and Structures Department ("MOW") work rebuilding a bridge at Mile Post DH508.28 on the Illinois Division, beginning on May 31, 2016.

The bridge is located on territory covered by the July 1, 1986 N&W-Wabash Agreement between the Carrier and the BMWED. The Organization contends that Appendix "F" governs the extent to which the Carrier is permitted to contract out MOW work. Appendix "F" reads as follows,

In the event a carrier plans to contract out work within the scope of the applicable schedule agreement, the carrier shall notify the General Chairman of the organization involved in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than 15 days prior thereto. If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the carrier shall promptly meet with him for that purpose. Said carrier and organization representatives shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached the carrier may nevertheless proceed with said contracting, and the organization may file and progress claims in connection therewith.

The Organization contends that there is no dispute that the building of bridges is Scope-covered work and the Carrier's MOW forces routinely perform the work of rebuilding bridges. The claimed work has customarily, historically, and traditionally been performed by MOW forces for decades throughout the Carrier's system.

The Organization contends that the Carrier was therefore obligated to notify the General Chairman in writing in advance of its intention to contract out this work and to enter into good faith discussions with the General Chairman. The Organization contends that the Carrier asserted that it provided proper notice which was conferenced on April 11, 2016, but provided no evidence to confirm same. In its November 10, 2016, on-property correspondence, the Organization challenged the Carrier's statement, but the Carrier failed to refute this assertion.

The Organization contends that the carrier's failure to comply with the advance notification and conference provisions of the Agreement requires a sustaining Award. The Organization contends that the Carrier must now fully compensate the Claimants for their lost work opportunity.

The Carrier contends that while the claimed work is undisputedly Scope-covered work, no violation of the Agreement has been shown. The Carrier contends that it has a long-history of using both MOW forces and outside contractors in large-scale bridge span replacements such as this. The Carrier contends that it has established a mixed practice with respect to the performance of this work.

The Carrier contends that even if this is Scope-covered work, it is still privileged to contract out this work, as it has done numerous times in the past, so long as it complies with the Notice and Conference provisions outlined in Appendix F.

The Carrier contends that it provided advance written notice of its intention to use outside forces for this project and that the parties discussed this matter in its April 11, 2016, conference.

The Carrier does not dispute the Organization's assertion that the claimed work, replacing the steel trestle on a bridge, was Scope-covered work, by virtue of it having been historically and customarily performed by MOW forces. Therefore, pursuant to Appendix F, the Carrier was required to demonstrate that it served advanced, written Notice of its Intent to contract out this work and that it conferenced with the Organization upon request. Although the Organization challenged its assertion that both requirements had been satisfied, the Carrier provided no evidence of same. Therefore, it has failed to show that it complied with the provisions of Appendix F requiring advance written notice and a conference upon request.

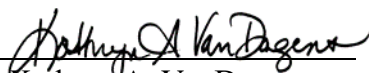
Under these circumstances, the Board finds that the Organization is entitled to a sustaining Award. Based on precedent on this property, the Claimants are entitled to a make whole remedy.


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 signed by the parties.


Kathryn A. VanDagens,
Chairman



Scott M. Goodspeed, Carrier Member



Adam Gilmour, Employee Member

Dated: April 8, 2024