Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8735
Docket No. 8528
2-NRPC-EW-'81

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(National Railroad Passenger Corporation

Dispute: Claim of Employes:

That under the current agreement Electricians employed by the National Railroad Passenger Corporation (Amtrak) were and are still being deprived of the contractual right to perform work rightfully theirs when the Carrier sub-contracted out fifty (50) A. C. Compressors on or about November 14, 1977 with the violation continuing to date.

That, accordingly, the Carrier be ordered to desist in the sub-contracting out A. C. Compressors to outside company and that the Carrier be ordered to compensate the attached list of Claimants in equal shares amounting to 2,000 hours completed by the outside contractor.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 Organization filed a claim dated May 27, 1978 contending that Amtrak violated Rule 1 of the September 1, 1975 Agreement between Amtrak and the IBEW, by subcontracting the repair of approximately 50 air conditioning compressors to the General Electric Company's Levittown, Pennsylvania facilities. These compressors were removed from various Amfleet cars assigned to the Penn Coach Yards. Amtrak made the request for the work to the General Electric Company on or about November 14, 1977.

The Carrier contends that the claim for 2000 hours at the straight-time rate must be dismissed because the claim is beyond the 60 day time limit set forth in Rule 24(a) of the IBEW-Amtrak Agreement. The Carrier did not give the Organization notice that it intended to subcontract the work in question. The record indicates that the Organization filed a claim as soon as it was made aware of the situation. We find that where the Carrier has not given notice of its intent to subcontract, and where no evidence of record indicates that the Organization knew or reasonably should have been aware of the subcontracting of the work in question, then the time limits shall run from the time the Organization became aware that the work had been subcontracted. The record indicates that the Organization discovered

such in May of 1978, and the claim was filed on May 27, 1978. The Carrier's position that the claim must be dismissed is rejected.

The Organization contends, in part, that the subcontracting of the compressors violated Rule 1 of the current Agreement. The Organization contends that Rule 1 was intended to have the classification of work rule in effect for the craft on the former railroad apply to the Amtrak facility; and it states that at Amtrak's Penn Coach Yard, the Agreement between the former Pennsylvania Railroad Company and System Federation No. 152 thus applies, including the scope and classification of work rules of that Agreement. The Organization before this Board contends that Appendix "F" of the Agreement of the parties supports its position. The Organization concludes that the work in question clearly belongs to the electrical craft. It states that Amtrak offers no evidence to rebut its contention that the work involved 2,000 hours of electrical work; and it requests that the claim be paid as presented.

Amtrak contends that no language implied or stated in the Agreement limits in any way Amtrak's right to subcontract work. It states the only limit on its right is a statutory one, which is applicable only when the contracting out will result in the lay off of employee(s) in the bargaining unit. Amtrak states that nearly all of the work involved in intercity rail passenger service was initially contracted out by Amtrak to other railroads and vendors; and that a considerable amount of work is still being performed by railroads and vendors today (some twenty to thirty percent). Amtrak refers to the bargaining history of Rule A of the Interim Agreement which is Rule 1 of the current Agreement. It cites Rule P of the Interim Agreement which is Rule 10 of the current agreement, and states that this rule is taken from Article 1 of the September 25, 1964 Agreement, and it concludes that absent from the Agreement is language on subcontracting from the September 25, 1964 Agreement because the Carrier refused to limit its right to subcontract. The Carrier refers to two Section 6 notices filed by the Organization dealing with subcontracting. The Carrier states that it has retained all rights and prerogatives which have not been bargained away, and since the Agreement is silent on subcontracting, it has the right to subcontract as it determines.

Rule 1 of the Agreement states:

> "Classification of Work
>
> Pending adoption of a national classification of work rule, employees will ordinarily perform the work which has been performed traditionally by the craft at that location, if formerly a railroad facility, or, as it has been performed at comparable Amtrak facilities, if it is a new facility."

The above-set-forth rules does not, as the Organization contends, express an intention of the parties to have the classification of work rule in effect for the craft on the former railroad property apply to the Amtrak facility in question, that is the classification of work rule found in the Agreement between the former Pennsylvania Railroad Company and System Federation No. 152. Appendix "F" of the current Agreement does not support this contention as the Organization contends.

Agreements must be construed as a whole; and from the entirety of Appendix "F" it is clear that the parties intended to deal with the avoidance and resolution of jurisdictional disputes between the Electrical Craft and other crafts at various locations. Rule 1 states that employees will ordinarily perform the work which has been performed traditionally by the craft at that location.

The record establishes that most of the work involved in intercity rail passenger service was initially contracted out by Amtrak to other railroads and vendors; and that Amtrak still contracts out some 20 to 30% of the work as of the hearing of this case. The record indicates that most railroads are a party to the September 25, 1964 Shop Crafts Agreement which restricts signatory carriers' right to subcontract work; however, Amtrak is not a party to such Agreement. The Organization served notice pursuant to Section 6 of the Railway Labor Act dated December 17, 1974, wherein it sought, amongst other things, the adoption of Article II of the September 25, 1964 Shop Crafts Agreement dealing with subcontracting. A Section 6 notice dated May 16, 1977, which the parties are still negotiating, includes a proposal "to prohibit subcontracting" of work covered by the classification of work rules. The record is clear that no specific language exists in any agreement between Amtrak and the Organization making reference to "subcontracting" or "contracting out" of work. Considering all factors, and the plain meaning of the language of Rule 1, we cannot find that the Organization identified express Agreement language prohibiting the subcontracting of repairs on compressors at the Penn Coach Yard, under the facts and circumstances of his case.

Amtrak contends that it has retained all rights and prerogatives which have not been bargained away; and since the Agreement is silent on subcontracting, it has the right to subcontract as it determines. We do not agree with this position as stated. We find that Amtrak, as it has acted over the years of its existence, does have the right to subcontract. Amtrak recognizes the statutory limitation prohibiting it from contracting out where such will result in the lay-off of an employee or employees from the bargaining unit. This Board has authority to review Amtrak's subcontracting decisions and Amtrak is put on notice that the Board will not allow the Agreement of the parties to become a relatively useless document by means of the contracting-out device.

In reviewing the limited factual record in the instant case, we must find that the Agreement and Amtrak's implied obligations under the Agreement have not been violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of June, 1981.