Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10386
Docket No. 10150
2-NRPC-EW-'85

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

Dispute: Claim of Employes:

1. That under the current Agreement the National Railroad Passenger Corporation (Amtrak) improperly contracted out work belonging to the Electricians at Beech Grove, Indiana when it contracted out the work of upgrading the electrical grounding circuits in Building No. 44 to the Major Electric Company from the period June 25 to July 8, 1981.

2. That accordingly, the National Railroad Passenger Corporation (Amtrak) should be ordered to compensate Electricians J. January and C. Hannon an additional 104 hours at time and one half the applicable Electrician's rate in order to make them whole.

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 employes 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 waived right of appearance at hearing thereon.

Claimants, J. January and C. Hannon, are Electricians employed by Carrier, National Railroad Passenger Corporation (Amtrak), at its Beech Grove Maintenance Facility.

On June 25, 1981, Carrier contracted out the work of repairing and upgrading the grounding circuits in Building No. 44 at the Beech Grove Maintenance Facility. Between June 25 and July 8, 1981, two employees of the Major Electric Corporation completed the repairs, each working 52 hours.

On July 19, 1981, the Organization submitted a claim seeking compensation for 104 hours at the overtime rate. The Organization alleged that the Carrier violated Rule 1 of the Agreement of September 1, 1975, between the Organization and the Carrier. Rule 1 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 Organization argues that the Carrier contracted out electrical wiring work that is traditionally performed by the Electrical Craft at Beech Grove under the rules of the Agreement between the New York Central Railroad and System Federation No. 54, AFL-CIO, effective October 1, 1923.

The Organization contends that grounding electrical circuits is basic Electricians' work and is performed by the Carrier's Electricians in all departments. Such work ordinarily is performed by Claimants in the normal course of their duties. The Organization claims that the Carrier improperly deprived Claimants of the opportunity to perform, and consequently Claimant should be compensated for, the work that Carrier contracted out.

The Organization contends that the Carrier did not meet the burden of proof in asserting that the work was properly contracted out; the Claimants sustained a wage loss because their work was subcontracted, and they are entitled to be made whole.

In addition, the Organization contends that the Implementing Agreement dated February 24, 1975, between the employees represented by various Organizations, National Railroad Passenger Corporation and the Trustees in bankruptcy of the Penn Central Transportation Company, contains language supporting its position and preserving employment and other benefits of the Organization's employees. Moreover, the Organization submits the Memorandum of Agreement dated January 31, 1973, corrected March 16, 1973, between the National Railroad Passenger Corporation and the International Brotherhood of Electrical Workers, which demonstrates that the National Railroad Passenger Corporation recognized the International Brotherhood of Electrical Workers as the sole and exclusive collective bargaining representatives for the employees in the craft and class of Electricians who were in the employ of the National Railroad Passenger Corporation at its Fields Point, Rhode Island, Repair Facility. The Agreement also states that the parties will promptly enter negotiations for the purpose of reaching an agreement governing working conditions.

Finally, the Organization submits an Agreement dated January 1, 1966, between the New York Central Railroad and various Organizations, setting forth in Rule 114 a description of Electricians' work duties, including the rewiring of shops and buildings. Consequently, the Organization argues that the work in question belongs to its members and should not have been contracted out by the Carrier.

The Carrier argues that the National Railroad Adjustment Board has previously considered whether contracting out electrical work constitutes a violation of Rule 1 and has resolved the issue in favor of the Carrier.

The Carrier contends that the Organization failed to meet its burden of proof in alleging that the subcontracting violated the applicable Labor Agreements; there is no language in the Agreement, either expressed or implied, that limits the Carrier's right to subcontract work.

The Carrier argues, finally, that the Organization has failed to show that the Claimants or any other of its employes lost any wages because of the subcontracting. The Organization has not shown that the Claimants were available and qualified to perform the subcontracted work, nor has the Organization cited a rule that supports its claim for compensation. The Carrier argues that the claim should be dismissed.

Moreover, Carrier argues that it is not a party to the earlier Labor Agreements, and there is no Agreement prohibiting Amtrak from subcontracting. The only restriction on its right to subcontract, contends the Carrier, is Public Law 91-518, which states:

> "The Corporation shall not contract out any work normally performed by employees in any bargaining unit covered by a contract between the Corporation or any railroad providing intercity rail passenger service upon the date of enactment of this Act and any labor organization, if such contracting out shall result in the layoff of any employee or employees in such bargaining unit."

Since there is no showing on the part of the Organization of any furloughs or layoffs, the Carrier argues there has been no violation.

Finally, Carrier argues that the Organization is forum shopping, and it is trying to get from this Board something it could not obtain in negotiations. The Organization has attempted to get restrictions on Amtrak's subcontracting during negotiations in the past and has failed.

This Board has reviewed all of the evidence in this case, as well as the numerous Agreements, court decisions, Awards of this Board and other documents submitted to it, and this Board has concluded that there is no evidence that the Carrier has violated its obligations under the Agreement.

The record is clear that most railroads are parties to the September 25, 1964, Shop Crafts Agreement, which restricts signatory Carriers' right to subcontract the work usually performed by the members of the various Organizations. However, Amtrak is not a party to that Agreement.

Moreover, there have been at least two attempts by this Organization, in 1974 and 1977, to negotiate a provision prohibiting subcontracting of work covered by the Classification of Work Rules. However, as of this date, those attempts for negotiation of a new limitation have been unsuccessful. No specific language exists in any Agreement between Amtrak and this Organization making reference or precluding subcontracting work.

Consequently, the plain meaning of the language of Rule 1 does not prohibit the Carrier from subcontracting the kind of work performed in this case.

As we have pointed out before (Award 8735), there are some limitations on Amtrak's subcontracting ability, that is, where it will result in employee layoffs or furloughs. Also, as we have stated before, this Board will not allow the Agreement of the parties to become a relatively useless document by allowing Amtrak to contract out all of its work and destroy the Organization. However, in reviewing the limited factual record in the instant case, we must find that the Agreement here has not been violated. There has been no showing of furloughs or layoffs and, consequently, no violation of Public Law 91-518. Therefore, this claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of May 1985.