Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10820
SECOND DIVISION Docket No. 10118
2-NRPC-EW-'86

The Second Division consisted of the regular members and in addition Referee Steven Briggs when award was rendered.

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

Dispute: Claim of Employes:

1. That under the current agreement, as amended, the National Railroad Passenger Corporation (Amtrak) improperly contracted out work belonging to the Electricians at the Wilmington, Delaware Shops when it subcontracted Electrical Workers' work of rebuilding traction motor armature No. 118, applicable to Metroliner equipment, to the General Electric Company from December 8, 1980 to February 20, 1981 both dates inclusive.

2. That accordingly, the National Railroad Passenger Corporation (Amtrak) be ordered to compensate each of the below listed Claimants eight (8) hours at the applicable Electrician's rate in order to make them whole for the loss of work opportunity as they were available to perform their work involved in the instant case.

"C" Electricians - Electric Shop - "E" Electricians

1. J. E. Kind
2. H. E. Dawson
3. W. Nolan
4. R. M. Krett
5. C. M. Jones
6. B. A. Pulgini
7. A. J. Farley
8. F. S. Dear
9. P. J. Mooney
10. S. J. Ingersoll
11. J. Wysocki

1. W. J. Barbic
2. T. Sloniewski
3. R. W. Granger
4. F. J. Lombardo

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 were given due notice of hearing thereon.

In early December, 1980, the Carrier sent Metroliner Traction Motor Armature No. 118 to the General Electric Company in Erie, Pennsylvania, for repair. G.E. did the work and returned the Armature to the Carrier at the end of February 1981. During this period the Claimants were regularly assigned the work of rebuilding Metroliner Traction Motor Armatures at the Carrier's Wilmington, Delaware facility (a former Penn Central facility). They learned when the Armature was returned that the Carrier had subcontracted such work and filed a claim dated March 23, 1981.

The Organization asserts that the Carrier violated Rule 1 of the Agreement:

> "RULE 1 - CLASSIFICATION OF WORK
>
> Pending adoption of a national classification of work rule, employes will ordinarily perform the work which has been performed traditionally by the craft at that location, if formerly a railroad facility, or, as has been performed at comparable Amtrak facilities, if it is a new facility."

The Organization argues that the Electrical Craft at the Wilmington, Delaware facility has ordinarily and traditionally performed the Armature repair work which was subcontracted to General Electric. And in an Agreement of January 13, 1976, regarding the Carrier's takeover of the facility from Penn Central, the Carrier assured the General Chairman:

> "During the negotiations of the Agreement, you expressed concern that Amtrak might subcontract some of the work to be performed for Penn Central described in Appendices A through G of the Agreement. This will confirm our understanding that such work will not be subcontracted by Amtrak unless it cannot be performed by Amtrak employes, and only then if it meets the criteria provided in Article II of the September 25, 1964, Agreement."

Furthermore, the Organization points to Article II, Section 1 of its September 25, 1964, Agreement:

> "Subcontracting of work, including unit exchange will be done only when genuinely unavoidable because (1) managerial skills are not available on the property but this criterion is not intended to permit subcontracting on the ground that there are not available a sufficient number of supervisory personnel; or (2) skilled manpower is not available on the property from active or furloughed employes; or (3) essential equipment is not available on the property; or (4)

> "the required time of completion of the work cannot be met with the skills, personnel or equipment available on the property; or (5) such work cannot be performed by the carrier except at a significantly greater cost, provided that the cost advantage enjoyed by the subcontractor is not based on a standard of wages below that of the prevailing wages paid in the area for the type of work being performed and provided further that if work is being performed by railroad employes in a railroad facility is subcontracted under this criterion, no employes regularly assigned at that facility at the time of the subcontracting will be furloughed as a result of such subcontracting...."

The Organization argues that the Carrier must bear the burden of proving that its subcontracting of the Claimant's work did not violate the stipulated criteria of the above language.

The Carrier maintains that the Organization must bear the burden of proving that an Agreement violation took place, and that it has failed to do so. It also argues that the Organization failed to prove that the Claimants sustained any damage as a result of the subcontracting or that there is a penalty rule in the Agreement. Finally, the Carrier notes that the Claim should be denied because this Board has previously resolved the identical issue.

This case is a matter of Agreement interpretation, and it has been clearly established in arbitration generally that the party raising the claim must bear the burden of proof. Thus, this Board holds the Organization responsible for demonstrating that the Claim has merit. We have reviewed both parties' arguments, and concluded that the record does not support the Organization's position.

Essentially, the record has not convinced us that the Carrier and the Organization have reached an agreement with respect to subcontracting. In negotiations for a November 6, 1973, "Interim Agreement" covering rates of pay, rules and working conditions for Amtrak employes, the Carrier acknowledged that it was statutorily prohibited from subcontracting work normally performed by bargaining unit employes only if such subcontracting resulted in the layoff of unit employes (Rail Passenger Service Act of 1970, Section 405(e)). During the same negotiations the Organization demanded a traditional Classification of Work Rule. The Carrier refused because at that time it could not project the volume and types of work it would require.

Moreover, we are precluded from considering the Organization's invocation of the January 13, 1976, Letter of Agreement, since such argument was not raised on the property.

Finally, this Board finds that the issue raised herein has been adjudicated by us in the past. In Awards 8734, 8735, and 8845 it was essentially held that Amtrak has a general right to subcontract. We refer the parties to Award No. 8735 for additional reasoning behind this holding.

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 16th day of April 1986.