

****CORRECTED****

**Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13797
Docket No. 13663
04-2-02-2-22**

The Second Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

PARTIES TO DISPUTE: (
(International Brotherhood of Electrical Workers
(The Burlington Northern and Santa Fe Railway Company

STATEMENT OF CLAIM:

- "1. That in violation of the governing Agreement the Burlington Northern/Santa Fe Railroad Company violated Appendix G-2, Article I, Sections 1, 2, 3 and 4 (CB&Q Labor Agreement Number 75-69) when it arbitrarily subcontracted the repair and rebuilding of cam module motors.**
- 2. That accordingly, the Burlington Northern/Santa Fe Railroad Company be directed to compensate West Burlington, Iowa Electricians Ron Siegel, et. al., in the amount provided for in the Agreement for the lost work opportunity."**

FINDINGS:

The Second 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 29, 2001, the Carrier notified the Organization of its intent to subcontract out EMD cam module motor repairs to Electro-Motive at a significant cost savings. In the notice, it advised the Organization that the projected cost to repair the motors on site was \$438.13 per unit while the cost to subcontract the repair with Electro-Motive was \$215.00 per unit. The notice did not contain a break down of the elements that made up the \$215.00.

The Organization argues that it is evident the work is assigned to and performed by the Electricians at West Burlington Shop. It says if that wasn't the case, how could the Carrier have arrived at a cost figure using the Electricians wages, benefits, and material costs? In addition, the Organization contends that the Carrier would not need to send IBEW notice of its intent to subcontract if the work had not been performed by the Electricians. Additionally, the Organization argues that no other craft filed a claim for the work involved.

The Organization also maintains that the Carrier violated the Controlling Agreement, Appendix G-2, Section 4, when it failed to provide the supporting data for contracting out the work. The Organization further contends that the Carrier inflated the costs of using Electricians to repair the product at its facility. The Organization says the cost of new motors was included in the site budget and inflated the cost of motor maintenance. In addition, it rejects the Carrier's claim that the material costs of such repairs was much higher than it would be if subcontracted out. In any case, the Organization argues that it could not do an accurate comparison of the costs because the costs of the subcontractor were not delineated. Moreover, the Organization says the actual repair of the motors was done by a firm other than EMD at a higher cost. It argues that use of this firm also violated the notification requirements.

The Carrier argues the involved work did not belong to Electricians. Therefore, they have no claim to the work. The Carrier cites Rule 76 in support of this contention and argues that the Classification Rule does not clearly describe the work at issue in this dispute. It further argues that Cam Motors are not mentioned at all.

Moreover, the Carrier argues that the Organization failed to refute the Carrier's cost analysis. It says that while the Organization insists the materials cost

to repair each unit locally is \$60.00, the Organization provided no documentation to support this position. The Carrier argues that even if the Organization's unsupported figures were taken at face value, the Carrier would still realize a savings of \$33.13 per unit or \$14, 245.00 per year. It argues that this is a substantial savings over performing the work with Carrier employees.

The Board reviewed the Submissions in this case with great care. The Board disagrees with the Carrier's contention that the Organization must prove it has system-wide exclusivity of the work in question. The Board is satisfied with the evidence presented by the Organization that it has been performing this work at the West Burlington Shop and that such work is subject to the Subcontracting Provisions of the Agreement. In this regard, the Board concurs with the conclusions expressed in Third Division Awards 35378, 35409 and 35431. Moreover, it is difficult to accept the Carrier's position when the Carrier felt the need to notify the Organization that it was about to subcontract this work. If, as it contends, the Organization had no right to this work, there would be no need to provide advance notice of intent to subcontract. Further, the Carrier provided a comparison of the costs incurred when the Electricians performed this work to the cost of the vendor performing this work. These figures could only have been obtained if Electricians were "generally recognized as performing this work at this facility."

We certainly concur that the Carrier has the right to subcontract work when there are legitimate substantial savings. In this case, however, we concur with the Organization that a valid comparison cannot be made because the Carrier failed to provide a breakdown of the costs associated with subcontracting the work. Although the Carrier claimed the total cost was \$215.00 per unit, it appears that the actual cost by Edwin Bohr Company was \$350.00 per unit. In neither case, however, were the costs itemized as required by the Agreement. There was no way the Organization could compare the elements that made up the costs of the repair with the costs of repairing each motor in-house.

Obviously, the preservation of jobs is extremely important to the Organization. When the parties agreed that the Carrier could subcontract if there are substantial savings, they incorporated language that allowed a fair comparison of the costs associated with the subcontracting versus the costs of performing the work in-house. Part and parcel of this comparison are the elements that comprise the cost of each employee performing this work; i.e., fringe benefits, wages, vacations, holidays, retirement, and a delineation of the subcontractor's bid

continuing the elements described at Section 4 of Appendix G-2. It would seem apparent that the reasons for these comparisons are not only to assure the Organization that there is justification for the subcontracting, but, also to provide the Organization with information it may use in modifying its bargaining demands in order to retain work for their craft or to allow the parties to study ways to increase productivity for both parties' benefit. When the Carrier failed to provide the breakdown of this information, not only did it violate the terms of the Controlling Agreement, it also prevented the proper evolution of the bargaining relationship.

The parties agreed to a specific remedy in Appendix G-2, Article II. Therefore, the claim is sustained and the appropriate remedy is determinable as provided in Appendix G-2.

AWARD

Claim sustained in accordance with the Findings.

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 transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 27th day of April 2004.