

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 14045
Docket No. 13931
12-2-NRAB-00002-110010

The Second Division consisted of the regular members and in addition Referee Lynette A. Ross when award was rendered.

(International Brotherhood of Electrical Workers
PARTIES TO DISPUTE: (
(BNSF Railway Company

STATEMENT OF CLAIM:

- “1. That in violation of the governing Agreement, ATSF Rule 88 and Appendix No. 7 in particular, the BNSF Railway Company arbitrarily subcontracted work belonging to Electrical Craft Employees represented by this Organization.
2. That accordingly, the BNSF Railway Company be ordered to compensate Electrical Craft Employees M. Vega, E. Thomas, Jr., L. Jones, Jr. and A. L. Randle for the amount provided for under the parties controlling Agreement and as amended by PEB 219.”

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.

At the Arbitration Hearing before the Board, the Carrier contended that the May 3, 2011 Notice of Intent to File an Ex-Parte Submission (Notice of Intent) filed by the Organization (Petitioner) did not meet the procedural requirement of paragraph 1.(a) of the National Railroad Adjustment Board's Uniform Rules of Procedure (Revised June 23, 2003). The Carrier's objection stems from the Organization's failure to furnish a separate copy of the Notice of Intent to the Carrier (Respondent).

The Carrier raised the identical argument in Docket 13926 (NRAB-00002-110007) before this tribunal. The Board found that, in addition to the Uniform Rules of Procedure, the procedural rules prescribed in the NRAB Instructions Sheet likewise require the Petitioner to send a separate copy of the Notice of Intent to the Respondent. The Organization did not dispute the fact that it had failed to furnish a separate copy of the Notice, as required. It essentially asserted, for various reasons, that the claim should nevertheless be deemed arbitrable, and that the Board should adjudicate the claim based on the procedural and merit arguments advanced by the parties during their on-property handling of the dispute.

The Carrier also averred in this particular case that the claim as originally filed by the Organization on April 19, 2010, was framed differently from the claim presented for consideration by the Board. Specifically, the Carrier asserted that the claim as set forth in the May 3, 2011 Notice of Intent cited, for the first time, Rule 88 as grounds for the claim. According to the Carrier, the Board must dismiss the claim because it was not handled in the usual manner.

The Organization responded that the Carrier's assertion is without merit. The Organization argued that because the claim is rooted in provisions of the subcontracting provisions of the September 25, 1964 National Agreement, Rule 88, the Electricians' Classification of Work Rule, was properly before the Carrier at all times during the claims handling process. According to the Organization, the Carrier was not taken by surprise by the citation of Rule 88 in the Notice of Intent, and the Carrier's objection is without merit. The Organization further argued that while the claim was handled on the property, the Carrier never properly denied it pursuant to Rule 39 of the Agreement.

After duly considering the parties' arguments in support of their respective positions, the Board set forth its findings and ruling in Award 14042 that the claim set forth in Docket 13926 (NRAB-00002-110007) was not arbitrable. Therein the Board stated:

“Like the Uniform Rules of Procedure, the NRAB Instructions Sheet also states that the Petitioner “must” file a separate Notice of Intent with the Respondent. The record in this case reveals that the Organization failed to follow that key procedural requirement, which the Carrier had a right to enforce and the Board has no authority to waive. See, Third Division Award 23170, supra, which essentially held that the Carrier’s failure to sign its Submission to the Board violated a procedural rule of Circular No. 1, thereby effectively rendering the dispute not arbitrable by the Board.

The Board is likewise reluctant to allow procedural matters to undermine our ability to decide a claim based on its merits. However, for the foregoing reasons the Board is compelled to dismiss the instant claim because the Organization failed to comply with the mandatory notification requirement prescribed in the Uniform Rules of Procedure.”

Given our careful review of the instant record, the Board finds that this claim must be decided similarly. For the sake of brevity, the Board’s findings and ruling as set forth in Award 14042 are fully incorporated herein by reference. Therefore, for the exact reasons provided in that Award, and based on the arbitral precedent established by Third Division Awards 20456 and 21441 requiring that the claim submitted to the Board must not be substantially different from the claim as handled on the property and that Rules cannot be supplied for the first time in the Notice of Intent, the Board concludes that the instant claim is not arbitrable as a result of the Organization’s failure to comply with the NRAB’s notice procedure, and must be dismissed.

AWARD

Claim dismissed.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

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

Dated at Chicago, Illinois, this 22nd day of October 2012.