

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 14050
Docket No. 13937
12-2-NRAB-00002-120006

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

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

STATEMENT OF CLAIM:

- “1. That in violation of the parties governing Agreement, ATSF Rule 88 and Appendix No. 7 in particular, the BNSF Railway Company arbitrarily subcontracted work on the BNSF 2234 which contractually belongs to the Electrical Craft Employees represented by System Council 16 of the IBEW.
2. That accordingly, the BNSF Railway Company be ordered to compensate Electrical Craft Employees E. Thomas, Jr. and C. L. Luth for the amount provided for under the terms of 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.

The Claimants are Mechanical Department Electricians employed at the Carrier's Kansas City, Kansas, Argentine facility. On or about September 11, 2010, the Carrier delivered BNSF 2234 to the RELCO shop in Albia, Iowa, for the removal of a remote control locomotive (RCL) system. The employees of RELCO, which is a privately owned company, performed the work.

On September 21, 2010, the Organization timely filed a claim on behalf of the Claimants. The Organization contended that the Carrier subcontracted the work in question without notification to the Organization, in violation of Rule 88, Electricians' Classification of Work, of the September 1, 1974 ATSF Agreement and Appendix No. 7, Article II, Subcontracting, of the September 25, 1964 National Agreement.

The Carrier denied the claim on November 9, 2010. On May 24, 2011, the parties discussed the claim in conference, with no mutually agreeable resolution attained. On that same date, the Carrier issued a second reply to the Organization's September 21, 2010 claim. The Carrier's letter reads, in pertinent part, as follows:

"The Organization's claim is denied in its entirety. As part of my investigation into this claim I contacted Bud Wilds, Mechanical Manager, Locomotives, in Fort Worth, Texas. Mr. Wilds informed me that BNSF 2234 was retired from service and is currently pending sale or scrap. It was not rebuilt, modified, or repaired as you erroneously assert in your letter. Obviously, since no work was performed on this locomotive, there is no substance to the Organization's claim."

The Carrier also asserted that the Organization failed to provide evidence that IBEW-represented employees have historically performed the type of work claimed and that the Claimants lost wages as a result of the work.

On June 10, 2011, the Organization responded that the Carrier had a duty to serve proper notice that the work in question would be subcontracted, and that if the Carrier had served such notice, the matter might have been settled in an initial conference. On June 14, 2011, the Carrier responded by stating that it had confirmed that the RCL equipment had been harvested from BNSF 2234, and that such work had always been contracted out. The Carrier further averred that the Organization

had failed to cite any specific provision of the Classification of Work Rule reserving the involved work to Electricians, and that because the work does not belong to IBEW-represented Electricians, the Carrier was not required to provide a subcontracting notice to the Organization.

As support for its position, the Carrier appended statements prepared by four Carrier Officers to its June 14, 2011 letter. A May 19, 2011 statement from Mechanical Manager Wilds reads, in pertinent part, as follows:

“For the last six years I have been the Manger of locomotive electrical systems with Locomotive Staff and am responsible for the installation and maintenance of Remote Controlled Locomotive (RCL) equipment across BNSF. In response to your request for a statement concerning installs on the BNSF or former ATSF, to my knowledge our electricians have never harvested from locomotives for reinstall or installed new any RCL equipment. During my 33 year career I have worked in many running repair facilities and the back shop at Topeka as an electrician and I can say with confidence that I have never witnessed or directed this work to be done on the BNSF or former ATSF.”

On October 31, 2011, the parties agreed to a time limit extension for this claim, and others, regarding the deadline to docket the claims to the Board. Specifically, the parties mutually agreed to a deadline of February 1, 2012.

On January 26, 2012, in response to the Carrier’s June 14, 2011 letter, the Organization sent the Carrier a nine page response with 52 pages of exhibits as additional argument and evidence in further support of its position. The Carrier received the information on January 30, 2012, and on that same day, prepared and issued a response. On February 1, 2012, the Organization filed its Notice of Intent to file an Ex-Parte Submission with the Second Division of the NRAB.

Preliminarily, the Carrier contends that the Organization’s January 26, 2012 letter and all correspondence submitted thereafter should not be considered by the Board. The Organization failed to respond to the Carrier’s June 14, 2011 until January 26, 2012, some six months later, during which time the Carrier’s position regarding the matter stood unchallenged. The Carrier’s procedural argument was

raised in identical form in the subcontracting claim identified as Docket No. 13938 (Case No. NRAB-00002-120007) before this tribunal and involving these parties. In response, the Organization asserted the same arguments defending the procedural integrity of the instant claim as it averred in Docket No. 13938. (Second Division Award 14051.)

For the sake of brevity, incorporated herein by reference are the parties' complete positions as regards the threshold question of whether the Organization's January 26, 2012 letter, and the parties' subsequent correspondence, should be considered by the Board in light of the Organization's February 1, 2012 filing of its Notice of Intent. As was our finding in Award 14051, here, the Board likewise holds that for the same reasons as set forth in that Award, the evidence contained in the Organization's January 26, 2012 Submission is of limited probative value and the parties' evidence submitted after the February 1, 2012 filing date has not been considered by the Board.

Turning to the merits, it is evident that Rule 88, Electricians' Classification of Work, of the September 1, 1974 Agreement contains no mention of radio control locomotives or the installation of RCL systems. The Board finds that the record evidence properly before the Board fails to establish the Organization's claim that the work of removing RCL equipment from BNSF 2234 was reserved to the electrical craft employees pursuant to Rule 88.

The Board also finds no probative evidence in support of the Organization's claim that the work of removing RCL systems had been historically or customarily performed by IBEW-represented employees. Although the record indicates that electrical craft employees have performed troubleshooting, maintenance, repairs, or modifications to RCL systems, the record is devoid of tangible evidence that such employees have performed the specific work of removing RCL systems.

Given our above findings, the Board is compelled to rule that the Agreement was not violated when the Carrier contracted for the removal of RCL equipment from BNSF 2234. In this record, the Organization has not proven by substantial evidence that troubleshooting and/or repairing RCL systems constitutes the same work as removing RCL systems from locomotives.

As previously noted above, Rule 88 makes no mention of removing RCL systems, and the instant record lacks any evidence establishing that the work at issue in this claim had been customarily or historically performed by the Carrier's electrical employees. Consequently, the Board rules that the Carrier did not violate Rule 88 by subcontracting with RELCO for the removal of RCL equipment from BNSF 2234 at RELCO's Albia, Iowa, facility. Lastly, the Board rules that because the claimed work was not shown to have been covered by Rule 88, the Carrier was not required to furnish advance notice of the subcontracting.

AWARD

Claim denied.

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.