Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8845
Docket No. 8777
2-NRPC-EW-'82

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon 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, the National Railroad Passenger Corporation (Amtrak) improperly contracted out the work of rebuilding and repairing of 27 Metroliner Cars to General Electric Company.

2. That accordingly the National Railroad Passenger Corporation (Amtrak) be ordered to desist from contracting out this work and compensate the employes listed below, in equal pay, the amount equivalent to eight (8) hours pay per day for each day that work on the 27 cars is being performed by the General Electric Company.

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 employe 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.

Late in 1977 the Carrier began to subcontract the rebuilding of Metroliner cars to the General Electric Company. The first of the cars were sent to General Electric on November 25, 1977. On February 28, 1978, the Local Chairman filed a claim protesting the subcontracting of ten Metroliners without identifying which Metroliners. The Carrier declined the claim for a variety of reasons in a timely fashion. The next development in this issue was on December 28, 1978, when the Local Chairman again filed a claim protesting the subcontracting of Metroliners. This claim referred to the subcontracting of 27 Metroliners and listed them by number.

The Carrier argues that the claim should be dismissed in its entirety because the December 28, 1978 claim was not filed "within 60 days from the date of the occurrence on which the grievance is based". The Organization responds that the claim can only be filed within 60 days of when they discover or have knowledge of the alleged violation. After carefully considering the arguments made by both sides, the only thing that can be concluded with certainty is that there were four Metroliners subcontracted within 60 days prior to the filing of the December 28, 1978, claim, namely cars 825, 827, 828 and 865. In view thereof

the Board will consider the merits of the subcontracting issue as it relates to the four Metroliners mentioned above.

In considering the merits, the Organization made two arguments in a hearing before the Board supporting their position, that the Board from the outset is precluded from considering. The Organization argued in the hearing that the subcontracting was precluded by virtue of a January 13, 1976 letter of understanding and Appendix C of an implementing agreement also dated January 13, 1976. The Carrier, at the hearing, objected to these arguments on the basis that they were not made on the property. In reviewing the record, the Board cannot find that these agreements were cited as support for the claim during its handling on the property or in the Organization's written submission before the Board. It is well established in the precedent of this Board that we cannot consider contentions not handled on the property. In finding that we cannot consider the impact of the January 13, 1976 agreements on the right of Amtrak to subcontract, we therefore make no judgment on their relevance to this issue.

On the property and in its written submission, the Organization contends that the Carrier is prohibited from subcontracting by Rule 1 of the September 1, 1975 Agreement and by a statutory limitation. This same issue and arguments were considered recently in Second Division Award 8735 (Referee Twomey). The Organization argued at the hearing that Award 8735 is distinguished from the instant case because it didn't consider the January 13, 1976 agreements. However, as we stated above, the January 13, 1976 agreements have not been properly invoked into this dispute and as a result Award 8735 is not distinguished. Based on the principle of stare decisis we hold the principle enunciated in Award 8735 to be applicable here. In Award 8735, it was held that Rule No. 1 does not act as a prohibition to the Carrier's right to subcontract. Further, it was stated:

> "We find that Amtrak, as it has acted over the years of its existence, does have the right to subcontract. Amtrak recognizes the statutory limitation prohibiting it from contracting out where such will result in the lay-off of an employee or employees from the bargaining unit. This Board has authority to review Amtrak's subcontracting decisions and Amtrak is put on notice that the Board will not allow the Agreement of the parties to become a relatively useless document by means of the contracting-out device."

In applying the facts of this case against this standard we cannot find that any violation has occurred. There is no evidence the subcontracting resulted in a layoff of any bargaining unit employee. In view thereof, the claim is denied.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 6th day of January, 1982.