

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Burlington Northern Railroad Company

Dispute: Claim of Employees:

- 1) That the Burlington Northern, Inc. violated the terms of the controlling agreement, specifically Rules 27 and 83, when they employed and/or permitted an outside welding contractor to perform welding duties at Seattle, Washington King Street repair track on January 4, 1980.
- 2) That accordingly, the Burlington Northern, Inc. be ordered to additionally compensate Carman Welder S. Stackhouse in the amount of eight (8) hours at the punitive rate of time and one-half (1 1/2) rate of pay for service claimed on 7:00 AM through 3:00 PM, January 4, 1980.

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 waived right of appearance at hearing thereon.

The Organization asserts that the Carrier either arranged with or improperly permitted an outside contractor to perform welding repair work on Amtrak Passenger Car No. 2053 on the Carrier's property at the King Street Station in Seattle. According to the Organization, a certified welder employed by Commercial Welding Company was called to the Carrier's property on January 4, 1980 to perform eight hours of welding work and such work is exclusively reserved to Carmen by Rules 27(a) and 83 as well as by historical practice on this property. The Carrier assigned several employes to observe the work as it was being performed by the outside welder. The Organization has represented to this Board that Claimant was not only available to perform the work but had also qualified as a certified welder.

The Carrier does not contest the Organization's contention that the disputed work would ordinarily belong to Carmen pursuant to Rule 83 but defends the claim on the basis that it has no control over the disputed work. The Carrier maintains that Amtrak arranged for the outside contractor to perform the welding

work on Amtrak's equipment and solely for Amtrak's benefit. So the Carrier reasons that since it lacked any authority to assign the work to Claimant (or any other Carrier employee) the disputed work is outside the scope of the applicable agreement. Alternatively, the Carrier argues that it did assign several employees to watch the outside welder perform the work so that they could do the work if similar situations arose in the future.

In our past decisions, this Board has followed the general proposition that where the disputed work is not performed at the Carrier's instigation, not under its control, not performed at its expense and not exclusively for its benefit, the work may be contracted out without a violation of the scope clause or the classification of work rule. Second Division Awards No. 8053 (Lieberman) and No. 7833 (Weiss); and see Third Division Award No. 20644 (Eischen). However, the carrier retains sufficient control over the work if it actively or affirmatively participates in the contracting out process when it knows the work is otherwise covered by the applicable agreement. Third Division Awards No. 23034 (Dennis) and No. 23036 (Dennis).

In this claim, we merely have the Organization's bare assertions that the Carrier made a commitment with Commercial Welding Company to perform the disputed welding work on January 4, 1980. The Organization has not presented sufficient supporting evidence for this Board to conclude that the Carrier had the authority to assign the welding work or that the Carrier actively participated in arranging for the outside contractor to perform the work. The outside welder repaired Amtrak equipment, at Amtrak's expense and the benefits flowing from the outside contractor's services inured solely to Amtrak. There is also no showing the Carrier participated in the selection of the contractor.

The Organization has asserted the existence of a contract between the Carrier and Amtrak whereby the Carrier is to do certain repair work on Amtrak equipment. But, the record does not disclose what rights, if any, Claimant or other Carmen have under any agreement between Amtrak and the Carrier. Thus, we must deny the claim for want of proof.

Our decision, however, is expressly limited to this particular occurrence on this particular date. We note that the Carrier at least permitted other employees to watch the welder perform the disputed work in anticipation of providing similar welding service to Amtrak in the future.

A W A R D

Claim denied.

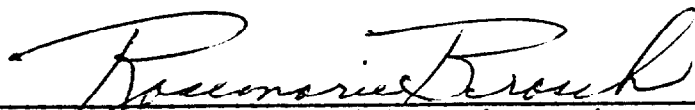
Form 1
Page 3

Award No. 9141
Docket No. 9196
2-BN-CM-'82

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of June, 1982.