

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12825
Docket No. 12763
95-3-93-3-113

The Second Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

(Sheet Metal Workers' International
(Association
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

- "1. That the Union Pacific Railroad Company, hereinafter referred as the Carrier, violated the controlling agreement dated September 25, 1964, Article II, Sections 1 and 2 when:
 - a. Without prior notice work of Sheet Metal Workers Water Service was contracted to an outside concern in October of 1988.
 - b. They improperly contracted out our work of installing and piping of fourteen (14) steam heaters in the new storage building just west of the Diesel Shop in North Platte, Nebraska.
2. That accordingly, the Union Pacific Railroad Company be ordered to compensate Sheet Metal Worker T.J. McQuade for the total number of man hours plus 10% in the contracting of the above work."

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 waived right of appearance at hearing thereon.

The dispute was still pending with SBA No. 570 when on June 1, 1993, the parties at the National Level agreed that disputes of this type which had not been assigned to and argued before a Referee at SBA No. 570 could "be withdrawn by either party at any time prior to August 1, 1993." The Agreement allowed that "a dispute withdrawn pursuant to this paragraph may be referred to any boards available under Section 3 of the RLA" (underscore ours for emphasis)

The operative facts of this case are not in dispute. As indicated in the Statement of Claim, supra, the dispute in question involves a "... new storage building just west of the Diesel Shop in North Platte, Nebraska." The case record indicates that in August 1988, Carrier entered into a contract for the construction of a new 17,000 square foot building. The general contractor in charge of the construction of the building arranged for certain sub-contracts for the performance of various parts of the total project. The specific portion of the project about which the Organization has complained is, as stated in paragraph 1.b of the Statement of Claim, the "... work of installing and piping of fourteen (14) steam heaters in the new storage building. . . ." This contention was made by the Organization in a letter dated November 22, 1988, in which the claim was initiated on behalf of the named claimant.

Throughout the on-property handling of this case and continuing before the Board, Carrier argued that it was not required to "piecemeal" this major construction contract to accommodate a minor portion thereof for the Claimant and, in any event, the work involved in this dispute did not accrue to the Sheet Metal Worker's craft either by Agreement or by exclusive practice. Therefore, Carrier contended that there was no advance notice required under the provisions of Article II of the September 25, 1964 Agreement and that there was no violation of any of the other provisions of the September 25, 1964 Agreement.

The Organization argued that the Sheet Metal Worker's craft has, in fact, performed work of the type here involved. In support of its contention of prior performance of this type of work, the Organization submitted to Carrier five statements from Water Service employees each of which indicated that he had "... in the past" performed work of a nature similar to that involved in this case. Carrier's rebuttal to these statements consisted of a tabulation of 200 examples of situations in which outside contractors had been used to install equipment similar to that involved in this dispute. None of the 200 examples was challenged or refuted by the Organization.

The Board has studied all the contentions of the parties and has reviewed the applicable Agreement provisions which are of concern in our determination of this dispute. The Board is convinced that this claim must be denied on the same basis as a similar claim involving these same parties was denied in Award 1 of Public Law Board No. 5181. In that Award, the Board held as follows:

"To prevail in this case, the Organization is required to show that the disputed work falls within the language of the Classification Rule.

There is no express reservation of new construction type work in the Rule. We agree with Special Board of Adjustment No. 570, Award No. 1007 that:

'Numerous awards have held that new construction or major renovation to buildings does not fall within the scope of similar classification rules (Second Division Award Nos. 3559, 2883). In this case, substantial rehabilitation as well as new construction took place. As such, Article II is not applicable in this dispute.'

In the absence of controlling language protecting the disputed work, the Organization had to demonstrate that it had historically performed the work. Some probative evidence in the form of short handwritten statements was provided to show that the work in question had been performed by Sheet Metal Workers. Taken altogether, these four statements lack specificity as to the times, dates, nature and magnitude of the work performed. They lack sufficient detail to conclude that the disputed work has been historically performed by Sheet Metal Workers. The Carrier referred to the statements as pertaining to 'one new construction project.' Nothing is found pertaining to numerous projects or to fire protection equipment. It is not refuted that the instant work involved complete new materials and equipment. The Carrier has provided documentation that new construction and remodeling has been contracted out for many years on this property. In the absence of express contractual language or sufficient probative evidence to conclude that a well-established practice exists on this property for Sheet Metal Workers to perform this work, we find that the Organization has failed to establish the necessary prima facie case.

Given the evidence at bar, the disputed work was subcontracted without a violation of the Agreement. The fact that the outside construction firm piecemealed the work to other subcontractors is not relevant. The Carrier is neither required to piecemeal the project, nor to withhold some part of the work to a particular craft of employees.

The claim must be denied. Carrier was not required in these instant circumstances to furnish advance notice under Article II, Section 2, of the September 25, 1964 Agreement."

In addition to the award of Public Law Board No. 5181 excerpted above, it has previously been held by at least 16 Awards of Special Board of Adjustment No. 570, each of which involved this same Organization, that a Carrier is not required to piecemeal contracted projects to permit assignment of a portion of the total project to a single craft. In this regard, attention is directed to Awards 228, 295, 299, 309, 312, 314, 337, 384, 392, 394, 426, 521, 710, 804, 898 and 1007 of SBA No. 570. This same determination has been reached in a plethora of awards involving other Organizations as well. For examples, see Awards 433, 496, 507, 582, 618, 1002 and 1051 of SBA No. 570.

On the basis of the total evidence in this case, there is no basis to conclude that an advance notice to the Organization was required prior to making the contract for the construction of the new building. Neither is there any basis on which to conclude that the construction contract should have been bifurcated to accommodate a single craft. There simply is no proof that the September 25, 1964 Agreement had any application in this case.

AWARD

Claim denied.

O R D E R

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

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 26th day of January 1995.