

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12826
Docket No. 12764
95-2-93-2-114

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

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

STATEMENT OF CLAIM:

- "1. That the Union Pacific Railroad Company violated Article II, Subcontracting, Sections 1 and 2 of the September 25, 1964 Agreement when the work of Sheet Metal Workers was contracted to an outside concern in February of 1990. They improperly contracted out our work of modifying an eleven car sleeper which consists of removing all existing steam lines, installing new air condition piping, modifying duct work, redoing all our piping to conform with A.B.W. brake system, air piping to all Microphor toilets, piping new air tanks and reservoirs, manufacture new water holding tanks and jackets, manufacture electrical boxes, cabinets under sinks, covers around toilets, etc.
2. That accordingly, the Union Pacific Railroad Company be ordered to compensate Sheet Metal Workers J.J. Besta, D.F. Fochek and R.D. Fiscus, who were furloughed when subcontracting began, for the total number of man hours of Sheet Metal Workers' work in the above described contract."

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.

Here we have a situation in which the Carrier gave a formal and proper notice to the Organization in accordance with the provisions of Article II, Section 2 of the September 25, 1964 Agreement of its intent to use an outside contractor to make extensive modifications to one of Carrier's business cars. The outside contractor in question was the Northern Rail Car Company located in Cudahy, Wisconsin. The stated reasons for this use of the outside contractor were threefold, namely, that there was a lack of skilled manpower at the Omaha, Nebraska, facility where such work is normally performed; that the time of completion of the required work could not be met by Carrier's employees; and that the work could not be performed by Carrier except at a significantly greater cost. The Sheet Metal Workers' Organization objected to this use of the outside contractor and initiated the claim which is the subject of this dispute.

From the record we find that the modification work on the business car involved approximately 13,000 man hours of work. Of this total, 9,945 man hours was Carman's work, 1,595 man hours was Electrician's work and 1,460 man hours was Sheet Metal Workers' work. Carrier averred, without contradiction, that there were not sufficient Carman in Carrier's employ to permit the performance of the work in question, thus justifying the lack of manpower reason for using the outside contractor. Carrier also argued, again without convincing contradiction, that the employees in service at the Omaha Shops where this type of work is normally performed were fully employed and could not absorb in a timely manner the additional modification project here in question.

The Organization vigorously argued that the work in question accrued by Agreement rule to the Sheet Metal Workers' craft; that there were furloughed Sheet Metal Workers at Omaha who could have been recalled to service to perform their portion of the project and therefore Carrier had no right to use an outside contractor under these circumstances. The Organization cited with favor Award 341 of Special Board of Adjustment No. 570 as precedential support for its position in this case.

The Board, after reviewing the entire text of Award 341, finds that it differs in several significant ways from the situation which exists in this case. First, that Award placed considerable emphasis on the fact that the Carrier erred when it did not give advance notice to the Organization and did not supply the Organization with supporting data as required by Article II, Sections 2 and 3 of the September 25, 1964 Agreement. Secondly, Award 341 found that in that case the outside contractor failed to meet, by a considerable time span, the projected completion date.

In this case, Carrier not only gave advance notice of its intent to contract but also furnished all supporting data and information required by the Agreement. In addition in this case, the contractor did, in fact, meet the projected completion date of the work. Therefore, we do not find Award 341 to be of any assistance in our determination of this case.

Clearly, what the Organization is seeking in this instance is the right to perform a small portion of a large project. In Second Division Award 12825, we addressed the issue of piecemealing of a contract. What was said in that award applies equally to this case. We hold, once again, that, under the provisions of Article II of the September 25, 1964 Agreement, Carriers are not required to piecemeal work of a major project to accommodate a single craft's performance of a minor portion of the project.

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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 26th day of January 1995.