Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13353
Docket No. 13197
99-2-96-2-102

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

(International Association of Machinists and
(Aerospace Workers
PARTIES TO DISPUTE: (
(Meridian & Bigbee Railroad Company

STATEMENT OF CLAIM:

"1. That the Meridian & Bigbee Railroad Company improperly subcontracted Carmen work to GE RailCar in violation of the October 5, 1993 Agreement, as amended and in particular Appendixes 1 and 8, but not limited thereto.

2. That accordingly, the Meridian & Bigbee Railroad Company be ordered to pay Carmen G. Frazier, E. Blanks, W. Brown and M. Hinson twenty (20) hours each at the straight time rate for a total of eighty (80) hours at the straight time rate."

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.

This claim raises the issue of whether Carrier was within its rights in sending five specified M&B Series 4000 railcars to GE Rail Car on August 25, 1995 for repairs, rather than having the work performed by its employees under the Agreement. Appendix No. 1 to the Agreement is a general prohibition against subcontracting inspection, servicing, maintenance, repair, modification and overhaul work on Carrier's equipment, and a reservation of that work to covered employees. Appendix No. 8 states, in pertinent part:

> "The work set forth in Appendix No. 1 and all other work historically performed and generally recognized as work of the Crafts pursuant to this Agreement on locomotives and railcars, but not limited thereto, shall not be contracted out by the Carrier no matter how purchased or made available to the Carrier.
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> Exception: The Carrier may allow GE Rail Car to perform heavy repairs requiring alterations, modifications or replacement of parts, as shall be necessary to maintain the boxcars leased from GE Rail Car in good operating condition only during the term of the present Lease . . . This applies to 281 cars identified as MB 4000 Series and. . . ."

In the instant claim and in the correspondence on the property, the Organization asserts that the repairs to be made on the cars in dispute were minor running repairs to the door hardware. Listed within Appendix No. 8 are examples of running repairs which are not to be contracted. Such list includes door hardware, but specifically excludes replacement of a door. In its response, Carrier averred that the noted cars were returned to GE at their request for upgrading and repainting. In denying the claim on November 17, 1995, Carrier stated:

> ". . . It is my opinion that Appendix No. 8 of the Agreement covers this matter, specifically the 2nd paragraph, 'Exceptions.' We have been after GE to upgrade these cars as they are in terrible condition and it is (and will be) our position that GE Rail car is obligated to keep these cars in reasonable condition for paper loading. This work goes beyond running repairs."

The Organization argues that the repairs performed by GE Rail Car were running repairs, historically performed by Carmen and specifically reserved to them

under Appendix Nos. 1 and 8 of the Agreement, citing Second Division Award 13062. Before the Board it included previous claims filed and settled where similar door repair work was contracted out, as well as a statement concerning the specific nature of repairs made to other Series 4000 numbered boxcars.

Carrier contends that the repairs involved were part of a major overhaul of the boxcars which were in terrible condition, and were rightfully sent back to GE Rail Car under the Exception to Appendix No. 8, relying on Public Law Board No. 5947, Award 3. It argues that Carrier is not required to piecemeal such repairs once major work is to be performed, and that GE Rail Car can perform all work incidental and necessary to getting the cars back together, citing Second Division Award 12825; Third Division Awards 31827, 29187, 28891, 26825. Carrier included copies of its lease documents with GE Rail Car in its Submission to the Board, and argued that it was the Lessor's responsibility to make these types of repairs. It also included a March 1995 letter to GE Rail Car concerning the terrible condition of the boxcars and the need for a reconditioning plan.

Initially, the Board notes that we have not considered any documents submitted or arguments made for the first time to the Board, and restrict ourselves to a review of the on-property handling of the case. The issue raised by the instant claim is whether the disputed repairs were running repairs as asserted by the Organization, or part of a major overhaul as contended by Carrier. There appears to be no disagreement that if the repairs are characterized as running repairs, they are covered by the protections against subcontracting in Appendix Nos. 1 and 8. Similarly, the Organization is not asserting that if a major overhaul was performed on these boxcars, then the incidental minor repairs involved could not also be performed by GE Rail Car. Employees are entitled to perform the work of running repairs, and Carrier is permitted to send back to GE Rail Car the leased Series 4000 boxcars for heavy repairs under the provisions of the Exception to Appendix No. 8.

Based upon a careful review of the record, the Board concludes that the on-property handling of this claim includes assertions by both parties as to the type of repairs that were performed on the cars in issue, but no objective proof of either position. As has long been held by the Board, mere assertions do not substitute for, or raise to the level of, fact. Since it was the Organization's burden to prove that Carrier violated the subcontracting provisions of the Agreement, we find that it has failed to meet its burden in this case. Accordingly, the claim must be denied.

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 20th day of January 1999.