Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No.13792
Docket No. 13662
04-2-02-2-21

The Second Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
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(Burlington Northern Santa Fe Railway Company

STATEMENT OF CLAIM:

"1. That in violation of the governing Agreement the Burlington Northern/Santa Fe Railroad violated Appendix G-2, Article I, Sections 1, 2, 3 and 4 (CB&Q Labor Agreement Number 75-69) when it subcontracted the repair and rebuilding of forty-three (43) EMD 3/4 horsepower fuel pumps and forty (40) EMD 3/4 horsepower turbo-lube pumps.

2. That accordingly, the Burlington Northern/Santa Fe Railroad Company be directed to compensate West Burlington Iowa Electricians Ron Siegel, et. al., in the amount provided for in the Agreement for the lost work opportunity."

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.

The Carrier operates a Diesel Locomotive Repair Facility in West Burlington, Iowa. Many of the component parts used to repair and rebuild locomotives are rebuilt in house. From time to time, the Carrier has concluded that it is a better business decision to have the components repaired by contractors.

On January 29, 2001, the Carrier notified the Organization of its intent to contract with Illinois Auto Electric for the repair and rebuilding of several components. The Carrier further advised the Organization that it realized a substantial cost savings when it subcontracted the repair of the EMD 3/4 HP Fuel Pumps and the EMD 3/4 HP Turbo-Lube Pumps. The total savings reported by the Carrier was $324.13 per unit with an estimated 379 pumps repaired annually for a total savings of $122,845.27.

The Organization claims the Carrier subcontracted 43 EMD 3/4 horsepower fuel pumps and 40 EMD 3/4 horsepower turbo-lube pumps in August and September 2001. The Organization argues that the Agreement dated April 1, 1983 (Form 12659), as amended, and provisions of the Railway Labor Act, as amended, are controlling. It maintains that this Agreement is still in effect. The Organization alleges that the Carrier violated the Agreement when it subcontracted the work in question.

The Organization insists that the Agreement requires the Carrier to provide detailed information concerning the cost savings associated with subcontracting the work. It argues that despite two written requests from the Organization, the Carrier failed to demonstrate through substantial evidence that the subcontracting resulted in significant savings. It further contends that the record is devoid of any documentation to support the Carrier's position. It cites Appendix G-2, Section 4(a) of the Agreement that requires the Carrier to break down bids into man hours, labor charges, shop overhead, material costs and specific work to be performed as well as other documents which substantiate the Carrier's alleged savings. Moreover, the Organization argues that the Carrier has an obligation to assure that the savings are not based on a standard of wages below that of prevailing wages paid in the area for the type of work being performed.

The Organization also claims that discrepancies exist in the notices sent by the Carrier. In addition, it asserts that the cost of materials should not be listed because the materials consumed in the rebuilding of the motors are the same and the price should be comparable if not identical. It includes in its argument its

figures and insists that those provided by the Carrier are greatly inflated. Moreover, it insists that the Carrier's figures do not take into account the reduced demand for the motors in question. The Organization maintains that whether there is work to do on a specific job or not, the Employee on that position is charged with time consumed on that position for each day. Therefore, if the supply of motors needing repair is reduced, the cost of building each motor is drastically increased.

The Organization disputes the Carrier's contention that the work was not done exclusively by IBEW-represented employees. It contends Job No's 7539 and 7550 are job assignments for the rebuilding and repairing of fuel and turbo-lube pump motors. Moreover, it insists that the job bulletins establish that this same work was assigned to the IBEW-represented employees prior to the Northern Lines merger involving the Carrier's predecessor road, the Chicago, Burlington and Quincy (CB&Q) Railroad. It includes Agreement Rule 98 in support of its contention. In addition, it cites the Classification of Work Rule which assigns this work to IBEW-represented employees. The Organization also submits that the fact that because the Carrier served notice solely on the Organization for the electrical work involved is an indication that it recognizes that the work involved belongs to IBEW-represented employees. Finally the Organization counters the Carrier's allegation that the Claimants are seeking a windfall by asserting that the Carrier is seeking an open license to contract out the work of the bargaining unit with impunity.

The Carrier disputes the Organization's assertions that the Agreement was violated when it subcontracted to repair and rebuild EMD 3/4 HP fuel pumps and EMD 3/4 HP turbo lube pumps. It disagrees that the work was assigned to the Electricians by clear agreement language or that it was historically the exclusive work of Electricians. It cites Rule 76, Classification of Work.

The Board reviewed the Submissions in this case with great care. We disagree with the Carrier's contention that the Organization must prove they have system-wide exclusivity of the work in question. We are satisfied by the evidence presented by the Organization that they have been performing this work at the West Burlington Shop and that such work is subject to the Subcontracting Provisions of the Agreement. In this regard, we concur with the conclusions expressed in Third Division Awards 35378, 35431 and 35409. Moreover, it is difficult to accept the Carrier's position when they felt the need to notify the Organization that they were about to subcontract this work. (See Employee Exhibit

B, P.1) If, as they contend, the Organization had no right to this work, there would have been no need to provide them advance notice of the intent to subcontract. Furthermore, the Carrier provided a comparison of the costs incurred when the Electricians performed this work to the cost of the vendor performing this work. These figures could only have been obtained had the Electricians been "generally recognized as performing this work at this facility."

The Board also considered the Carrier's contention that the work grieved by the Organization was also performed by the machinists. Although it is apparent that work is performed on these motors by two different crafts, the record shows that the work performed by each craft is different.

The purpose of Article I goes beyond providing advance notice of the Carrier's intent to subcontract. It requires justification by the Carrier of its decision and provides the Organization the opportunity to challenge the Carrier's determinations. In addition, it allows the Organization the opportunity to review the comparisons and, if they so desire, negotiate changes which allow them to keep the work.

In the instant claim, the Carrier has not met its evidentiary burden with respect to Article I. It may be true that the Carrier can have the pumps repaired by a vendor at a substantial cost savings. However, it provided too little information to make that determination. We are left to wonder whether the pumps provided by the vendor are built with the same quality of materials, the same standards of operation, the same warranties, and the same overall specifications. This is not to suggest that the Carrier cannot change its specifications for such work. However, it cannot be accepted that it can have the work completed at a substantial cost savings if the specifications used by the Electricians produce a product of far greater quality and/or if the specifications used by the Electricians result in a higher cost. Along the same lines, the record does not establish any comparison of similar quality material and parts.

We also agree with the Organization that we have little evidence on how the Carrier arrived at the number of hours it takes an Electrician to complete the work in question. Moreover, we do not know if we are comparing apples and oranges. There were no figures produced to establish that the vendor was paying its employees at the prevailing rate for such work. The Board does not believe an accurate comparison can be done without this information. Further, there was no

evidence to show that this work has been subcontracted in the past without objection from the Organization. We therefore conclude that the Carrier did not comply with Article I, Sections 3 and 4.

As to the remedy, the parties agreed to the specific remedy in Appendix G-2, Article II. Therefore, the claim is sustained accordingly.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 11th day of March 2004.