

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(National Railroad Passenger Corporation - (Amtrak)  
Northeast Corridor

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned outside forces to install restrooms and perform related plumbing and piping work at the 30th Street Station on February 14, 15, 19, 20, 21, 22, 25, 26, 27, 28, March 1 and 4 and April 15, 16, 17, 18, 19, 22, 23 and 24, 1985 (System Files NEC-BMWE-SD-1268 and NEC-BMWE-SD-1331).

(2) The Carrier also violated the Agreement when it did not give the General Chairman advance written notice of its intention to contract out said work.

(3) As a consequence of the aforesaid violations, Plumber F. Lawler shall be allowed ninety-eight (98) hours of pay at his straight time rate, Plumber J. Scheck shall be allowed eighty-seven (87) hours of pay at his straight time rate and Plumber F. Ruddle shall be allowed eight (8) hours of pay at his straight time rate."

FINDINGS:

The Third 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 employes 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 seeks a total of 193 hours at the pro-rata rate on behalf of 3 plumbers based on the contention the Carrier violated the Agreement when it assigned outside forces to install restrooms and perform related plumbing and piping work at the 30th Street Station on various dates in February, March, and April 1985, and did not give the General Chairman advance notice of its intention to contract out said work.

Carrier's position is that the Claims are without merit and that the Claimants are not entitled to any compensation. Further, Carrier submits that the Organization has failed to sustain its burden of proof that a violation of the Agreement occurred in this case, because the Scope and Work Classification Rules were not applicable in this matter and the cited work was included in a project of which the Organization had been notified. Moreover, the Carrier argues that the Claims are unwarranted and excessive in any event.

As we view the evidence presented and the issues joined by the parties, the threshold question which must be addressed is whether the Scope and Work Classification Rules are applicable herein. While the Organization relies upon these provisions of the Agreement in support of its Claim, the Carrier maintains that the disputed work was part of the Northeast Corridor Improvement Project, a federally funded project that was contracted out under the terms of the Minimum Force Agreement and not the Scope and Work Classification Rules. Carrier further asserts that an outline of the work for the 30th Street Station was provided to the Organization and that the Organization was given the opportunity to meet to review the details of the project. Contrary to the Organization's contention, the Carrier stresses that the subject work was always part of the specifications and details of the 30th Street Station Improvement Project, a description of which was forwarded to the Organization on May 19, 1980.

The Minimum Force Agreement, dated May 15, 1980, recognizes that the Carrier is mandated by federal statute to make various improvements in the Northeast Corridor and that the scope of these federally funded projects may necessitate the use of contractor forces to perform work which normally accrues to the Organization's forces. Article III(A) sets forth the notification procedures to be followed in the event such contracting out does occur. As set forth therein, notification must "fully describe each item of work in the project to be done by the contractor(s) and will fully describe the work to be performed by (Carrier) support forces including the number and classification of such forces." The Organization then may request a conference with the Carrier to evaluate or clarify the items set forth in the work project.

Significantly, Article III(C) of this Agreement expressly provides that the foregoing notification procedures shall not apply to maintenance projects, special projects sponsored under CETA, or projects which are not financed by the use of federal funds. In those instances, where the work involved is work which normally accrues to employees represented by the Organization, the "matter shall be handled in accordance with the procedures set forth in the Collective Bargaining Agreement between the parties."

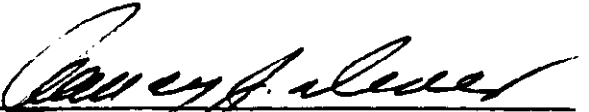
It is our view that the provisions of the Minimum Force Agreement are dispositive of the matter now before this Board. We are satisfied, after careful review of the evidence, that the work at issue was part of the 30th Street Station federally funded project, and that, therefore, the notification procedures in the Minimum Force Agreement were fully applicable. However, we are precluded from considering whether the Carrier complied with the provisions therein since the Organization in its Claim relied solely on the Scope and Work Classification provisions of the Collective Bargaining Agreement as the basis for its contention that the notification was improper or incomplete. Since we perceive that those contractual provisions are not applicable to the instant case, we have no alternative but to deny the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deger - Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1991.