

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(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, without prior notice to or discussion and agreement with the General Chairman, it used outside forces to construct a switching yard at Tampa, Florida beginning in January, 1984 (System File C-4(10)-AMTRAK/BMWE-TC-046).

(2) Foreman S. M. Chavez and Trackman W. K. Collins shall each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man-hours expended by outside forces in performing the work referred to in Part (1) hereof sixty (60) days retroactive from April 27, 1984."

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.

According to the Organization's Submission, Carrier contracted with an outside concern, Amtrak Railroad Construction Company, to construct a switching yard at Tampa, Florida. Six (6) tracks, five (5) switches and a crossover, amounting to approximately one mile of track, were constructed. Claimants were assigned as Foreman and Trackman, respectively, at Hialeah, Florida, when this dispute arose.

The Organization asserts that Carrier did not give the General Chairman fifteen (15) days' advance notice of its intention to contract out the work in question as required by Rule T, which reads:

"RULE T. CONTRACTING OUT

1. In the event the Carrier plans to contract out work within the scope of the schedule agreement, the Chief Engineer shall notify the General Chairman in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than 15 days prior thereto.

2. If the General Chairman requests a meeting to discuss matters relating to the said contracting transaction, the Chief Engineer or his representative shall promptly meet with him for that purpose. The Chief Engineer or his representative and the General Chairman or his representative shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached the Chief Engineer may nevertheless proceed with said contracting, and the General Chairman may file and progress claims in connection therewith.

3. Nothing in this Rule shall affect the existing rights of either party in connection with contracting out. Its purpose is to require the Carrier to give advance notice and, if requested, to meet with the General Chairman to discuss and if possible reach an understanding in connection therewith."

It is further argued by the Organization that Claimants were fully qualified and available to perform the work involved here had the Carrier afforded them an opportunity to do so.

Carrier argues, first, that inasmuch as the Organization was aware of the contracting out project prior to February 29, 1984, its claim received by Carrier on April 30, 1984, exceeded the time limitations prescribed by Rule T of the Agreement. Moreover, Carrier notes that the Organization modified its claim before this Board in an attempt to extricate itself from this timeliness defect. Second, and notwithstanding its procedural allegations, Carrier contends that no advance notice was given to the Organization because Carrier had no employees at that location and the property was neither owned nor leased by Amtrak at the time the work began. To the contrary, Carrier submits, the lease was not signed until January 27, 1984. In addition, Carrier

points out that it agreed by letter dated February 29, 1984, to meet with the General Chairman to discuss the contracting out project which was already underway at Tampa, and that after several meetings and conversations, the parties could not reach an accord. Finally, Carrier maintains that the two Claimants could not possibly have performed the work in question. Carrier argued it is not required to dissect or fragment a contracting out project into several components so that some employees may perform part of the work. In any event, since Claimants were fully employed during the claim period, no remedy should issue, Carrier insists.

After careful review of the record in its entirety, it is our view that Carrier's timeliness objection is indeed dispositive of the instant case. Carrier has maintained that the instant claim, received on April 30, 1984, is untimely because it is beyond the 60 day time limit, whether calculated from the date the project began or the date the Organization had knowledge of the contracting out. Furthermore, Carrier argues that the claim is not a continuing claim because it was based on a single occurrence, i.e., Carrier's alleged failure to give advance written notice of its intention to contract the work in question.

The weight of Board precedent on the subject of continuing claims clearly favors the Carrier's position. Although the Organization argued that the claim herein is a continuing claim since the work in question was being performed by an outside concern both prior to and subsequent to the filing of the claim, that contention has been rejected in prior Awards dealing with the subject of contracting out, as well as in many other kinds of disputes. See Third Division Awards 26689, 23953, 21376 (contracting out); also see Second Division Awards 11515, 11471; Third Division Awards 27327, 26328, 26124, 20631.

While the claim presently before us may have had potential continuing liability, it is one which had as its basis an alleged violation which occurred on a date certain; that is, the date the Carrier subcontracted out the disputed work without notifying the Organization. The Organization had sixty days from that initial triggering event to file a claim, and did not do so. The claim, therefore, must be dismissed on that basis.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1991.