

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32220  
Docket No. MW-31292  
97-3-93-3-358**

**The Third Division consisted of the regular members and in addition Referee W. Gary Vause when award was rendered.**

**(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(National Railroad Passenger Corporation (AMTRAK)**

**STATEMENT OF CLAIM:**

**"Claim of the System Committee of the Brotherhood that:**

- (1) The Carrier violated the Agreement when it assigned or otherwise allowed outside forces (Jim Brittles) to install architectural metal grilles within the 30th Street Station at Philadelphia, Pennsylvania on March 23 through 27, 1992 and on a continuing daily basis thereafter (System File NEC-BMWE-SD-3148 AMT).**
- (2) The Agreement was further violated when the Carrier failed to give the General Chairman advance written notice of its plans to contract out said work.**
- (3) As a consequence of the aforesaid violations, B&B Mechanic E. Hollins shall be allowed eight (8) hours' pay at his applicable straight time rate for each workday beginning on March 23, 1992 and continuing until the violation ceases."**

**FINDINGS:**

**The Third 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.**

**At the time of the events which led to this claim, Claimant was employed as B&B Tinsmith, headquartered at 32nd Street, Philadelphia, Pennsylvania. The Organization filed a time claim dated April 7, 1992 on behalf of the Claimant for work performed by outside forces on March 23 through 27, 1992 and continuing.**

**The Organization asserted that the Carrier violated the Scope Rule because it failed to give the General Chairman any advance written notice of its plan to contract out the work.**

**The Carrier defended on the grounds that the work in question was included within an April 12, 1988 Notice of Intent to rehabilitate the 30th Street Station, and was precluded by a subsequent agreement reached November 29, 1989. In a letter dated June 5, 1992 the Acting Division Engineer advised the Local Chairman that the claim was denied, and stated:**

**"The Carrier contends this work is within the scope of the Station Rehabilitation Project, and therefore did not require additional labor clearance. In a letter dated November 29, 1989 from Mr. L. Hriczak, and signed by General Chairman Dodd, Amtrak guaranteed 1206 man days of B&B work in the project or payment for such number of days at the pro rata rate. This agreement precludes claims for work associated with the project."**

**In a letter dated October 1, 1992 the General Chairman rejected the Carrier's assertions that the work was part of the 30th Street Station Rehabilitation Project and stated:**

**"The Carrier has proffered the myth that the work performed by Jim Brittles was performed as it fell under the original labor clearance for the Thirtieth Street Station Rehabilitation Project. When proffered by the Carrier, the Thirtieth Street Station Rehabilitation Project articulated precise terms. The work performed by the contractor was not then nor is**

it today part of that rehabilitation project. The work performed by the contractor is work that clearly comes under the terms of the prevailing Agreement and is work routinely performed by B&B employees."

The parties raised a number of issues before the Board, but the threshold issue for determination is whether the claim is precluded from jurisdiction of the Third Division of the Board. Analysis of this issue must begin with the agreements of the parties. As stated in Third Division Award 17988 (Devine):

"... We agree with prior awards of the Board to the effect that procedures established and accepted by the parties themselves for resolving disputes should be respected."

Based upon careful review of the record, the Board finds that it does not have jurisdiction of disputes between the parties which allege an improper contracting of work within the scope of the Agreement. This result is required under paragraph A(1)(d) of the Scope Rule which states:

"Any question with regard to contracting out work in accordance with the scope of this Agreement may be referred by either party to a Special Board of Adjustment created specifically and solely to hear and render decisions upon such questions. The Special Board of Adjustment shall operate in accordance with the Agreement appended hereto as Attachment 'A'."

Paragraph B of Attachment "A" of the Scope Rule states:

"The Board shall have jurisdiction only of disputes or controversy arising out of the interpretation, application or enforcement of the Scope Rule provision of the Schedule Agreement, as revised September 2, 1986, between the parties hereto."

Accordingly, the Special Board of Adjustment has jurisdiction over disputes or controversies arising out of the interpretation, application or enforcement of the Scope Rule. As the Organizations's Statement of Claim alleges a violation of the Scope Rule, involving work performed by outside forces, this dispute should have been referred to the Special Board of Adjustment.

Notwithstanding the clear mandate of the Scope Rule, the Organization argues that its position is supported by Third Division Award 31996, in which a similar claim was sustained by the Board. The Carrier's argument that the Board was precluded from jurisdiction was discussed and rejected in one terse sentence:

**"Finally, Carrier's argument that primary jurisdiction in Special Board of Adjustment No. 1005 deprives this Board of concurrent jurisdiction and authority to hear and decide this dispute is not persuasively established in this record."**

The Board's decision in Award 31996 may be explained by the Carrier's failure to produce evidence sufficient to convince the Board of its jurisdictional argument, or there may be another explanation for the decision. See the Carrier Members' Dissent to Third Division Award 31996. In any event, the Carrier adduced sufficient evidence to sustain its jurisdictional argument in the instant case.

The Third Division fully considered this identical issue in Third Division Award 31481 and drew the following conclusions:

**"Clearly, the Scope Rule contains the contracting out language, including the mandatory advance notice clause. By the inclusion of the contracting out language in the Scope Rule and by agreeing that all questions regarding the interpretation, application, or enforcement of the Scope Rule would be resolved by the Special Board of Adjustment, the Organization locked itself into a position that if a contracting out-Scope Rule grievance is filed, its final resolution lies solely with the Special Board of Adjustment.**

**\* \* \* \***

**We must dismiss this claim."**

This same result is required in the instant case, and the claim therefore is dismissed.

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**AWARD**

**Claim dismissed.**

**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 Third Division**

**Dated at Chicago, Illinois, this 17th day of September 1997.**