

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38195
Docket No. MW-38988
07-3-05-3-432

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

(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference

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 outside forces (Swanson Railroad Contractors) to perform Maintenance of Way Track Sub-Department work (build/install switch panels, install ties, make boutet welds, install rail and related work) in the Chicago Yards on May 29, June 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17 and 18, 2004 instead of Track Department employees (System File BMW-510 NRP).
- (2) The Agreement was further violated when the Carrier failed to give the General Chairman proper advance written notice of its plans to contract out said work or make a good-faith attempt to reach an understanding concerning said contracting as required by Rule 24.
- (3) As a consequence of the violation referred to in Parts (1) and/or (2) above, all Track Department employees with an active employment relationship during the above-referenced period shall now ‘. . . be paid an equal amount of the total man hours expended by the Contractor in perform this work.’***”

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.

By letter dated February 6, 2004, the Carrier notified the Organization of its intent to use an outside contractor for work in the Chicago Yards. The work identified to be contracted out was installation of 15 turnouts and the rebuilding of 8500 feet of yard track, including rails, ties and ballast. Although the record is not precisely clear, the evidence shows that the Carrier and the Organization met on several occasions after the Carrier's notice was given and up through March 10, 2004 concerning the Carrier's stated intent to contract out the work. However, agreement was not reached and the Carrier contracted out the work. No scope covered employees were furloughed as a result of the contracting of the work.

This claim followed protesting the contracting of work on the dates set forth in the claim.

The Carrier contracted out work covered by the Scope Rule (Rule 1). The work described in the claim and in the record is typical work performed by Maintenance of Way forces.

However, the governing Rule is Rule 24:

- "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.
4. (1) Amtrak may not contract out work normally performed by an employee in a bargaining unit covered by a contract between a labor organization and Amtrak or a rail carrier that provided intercity rail passenger transportation on October 30, 1970, if contracting out results in the layoff of an employee in the bargaining unit.

(2) This subsection does not apply to food and beverage services provided on trains of Amtrak."

Notwithstanding the provisions of the Scope Rule, the Carrier has the right to contract out work. If the Carrier did not have that right, Rule 24 would have no meaning.

The Carrier met its obligations under Rule 24. Timely advance notice was given to the Organization by the Carrier of its intent to contract out the work and

the parties met on several occasions in an effort to reach agreement concerning the Carrier's stated intent. Further, no employee was furloughed as a result of the contracting out of the work in dispute. The parties' inability to reach agreement in their discussions concerning the Carrier's decision to contract out work does not amount to a showing by the Organization that the Carrier failed to meet its obligations under Rule 24 or any other requirements as being indicative of bad faith on the Carrier's part.

Based on the above, the Organization has not carried its burden. The claim will therefore 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 Third Division**

Dated at Chicago, Illinois, this 18th day of May 2007.