

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38213
Docket No. MW-39391
07-3-06-3-66

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 (A&S Metal Roof Repair, Inc. and Hourning Roofing) to perform Maintenance of Way Bridge and Building Sub-Department work (removal/install roofing, insulation, drains, gutters, downspouts, snow guards and related work) on Building #46 at the Beech Grove Facility in Beech Grove, Indiana beginning on June 28, 2004 and continuing through August 13, 2004 (Carrier’s File BMWE-517 NRP).
- (2) The Agreement was further violated when the Carrier failed to give the General Chairman proper advance written notice of its intent to contract the aforesaid work or make a good-faith effort 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, Claimants S. Short, B. Creed, M. Eiler, D. Tester, K. Kress, L. Geis and R. Douglas shall now each be compensated ‘... for all hours worked by contractor, ten hours daily, five days a week, commencing June 28, 2004 and

concluding on August 13, 2004. And the days claimed should be paid as time worked to apply to all applicable benefits.”

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 April 30, 2004, the Carrier notified the Organization of its intent to contract out installation of a new 202,400 square foot membrane roof on Building 46 at the Beech Grove, Indiana, Maintenance Facility. According to the letter, the project involved removal of the 48 existing deteriorated roof drains; installation of new roof drains and drain leads; installation of new gutters, downspouts, straps and snow guards; vacuum and cleaning via Hydro-vac of the entire roof area prior to installation; installation of 3” polyisocyanurate insulation; and installation of 45 Mil Firestone heat welded TPO membrane roof. The Carrier estimated that the contractor would utilize 20 roofing employees to complete the work in four weeks and the estimated cost of the project was \$333,657. Further, according to the Carrier’s letter:

“The roofing material used in this project is single-ply armoflex thermoplastic polyolefin roofing membrane manufactured by Firestone Building Products Company. The installation of this product requires special skills and factory training which our employees do not have. The manufacturer requires the installation be performed by factory-trained installers as a requisite to providing a 15-year warranty.

We are presently experiencing numerous leaks as a result of the deteriorating condition of the present roof, and therefore, we are scheduling this work to start as soon as materials and labor are available.

The trade skills required for the installation of this roof are not present within Amtrak on the level or magnitude required for the continuation of on-going projects and the expedient completion of this project. It is also imperative that Amtrak retain the services of a qualified contractor to take full advantage of the manufacturer's warranty.

No Amtrak employees will be furloughed as a result of the contracting out of this work."

The Carrier met with the Organization on May 21 and June 1, 2004, but the parties were unable to reach an understanding concerning the Carrier's contracting out which was satisfactory to the Organization. The contracting out proceeded and no employees were furloughed as a result. This claim followed.

The claim focuses on Rule 24 ("The Agreement was further violated when the Carrier failed to give the General Chairman proper advance written notice of its intent to contract the aforesaid work or make a good-faith attempt to reach an understanding concerning said contracting as required by Rule 24.").

Rule 24 provides:

- "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."

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 this very extensive work and the parties met on several occasions in an effort to reach agreement concerning the Carrier's stated intent. The failure to reach agreement, by itself, does not demonstrate bad faith by the Carrier.

The Organization asserts that the work began on June 28, 2004 and argues that it requested but failed to receive proof from the Carrier that the contract with the contractors did not pre-date the Carrier's notice to the Organization. The adverse inference the Organization seeks to have drawn (i.e., that the Carrier entered into the agreement with the outside contractor prior to sending the

Organization notice of its intent to do so) does not, by itself, amount to a showing that the Carrier could not contract out the disputed work for this extensive project. Rule 24(1) states that the Carrier "... 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." The Carrier did that.

Public Law Board No. 6671, Award 2 relied upon by the Organization does not change the result. That case involved a question of whether the Equipment Rental Agreement allowed the Carrier to contract out certain scope covered work when the Carrier "... does not have equipment available to perform [the] work and said equipment cannot be rented or leased without an operator." The Equipment Rental Agreement is not at issue in this case. Rule 24 is. And, as discussed, no violation of Rule 24 has been proven.

The bottom line here is that notice was given by the Carrier as required by Rule 24; the parties met; and the parties were unable to reach agreement on the Carrier's stated intent to contract out the large project in this case. Standing alone, 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 failed to satisfy its burden of proof. The claim will therefore be denied.

AWARD

Claim denied.

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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 25th day of June 2007.