

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39950
Docket No. MW-40203
09-3-NRAB-00003-070463
(07-3-463)**

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

PARTIES TO DISPUTE: (**Brotherhood of Maintenance of Way Employees Division –**
(**IBT Rail Conference**
(**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 (Fleet Environmental services) to perform Maintenance of Way work (pick up paper and other general cleanup duties) on Tracks 1, 2 and 3 at Back Bay Station in Boston, Massachusetts on May 13, 14, 21, 22 and 30, 2006 (System File NEC-BMWE-SD-4607 AMT).**
- (2) The Agreement was further violated when the Carrier failed to provide the General Chairman with a written advance notice of the plans to contract out said work.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant S. McCormick shall now be compensated at his respective and applicable rates of pay for all straight time and overtime hours expended by the outside forces in the performance of the aforesaid work on May 13, 14, 21, 22 and 30, 2006 and Claimant J. Chisholm shall be compensated at his respective and applicable rates of pay for all straight time and overtime hours expended by the outside forces on May 14, 22 and 30, 2006.”**

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.

The record reflects that the Carrier assigned Agreement-covered employees to perform cleanup work at Back Bay Station. Upon discovery of potentially hazardous materials, such as hypodermic needles and human waste, the Carrier contracted the remaining work to Fleet Environmental Services. The Carrier did not serve notice of intent to contract out on the General Chairman or afford the Organization an opportunity to conference with respect to the contracting.

The Scope Rule provides, in relevant part:

“In the event Amtrak plans to contract out work within the scope of the schedule agreement, the Director-Labor Relations 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 fifteen (15) days prior thereto.

If the General Chairman requests a meeting to discuss matters relating to the said contracting transaction, the Director-Labor Relations or his representative shall promptly meet with him for that purpose. The Director-Labor Relations 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 Director-Labor Relations may nevertheless proceed with said contracting, and the General Chairman may file and progress claims in connection therewith.”

Side Letter No. 1, dated January 5, 1987, provides, in relevant part:

“It is the Carrier’s intent to continue performing general right of way clean-up work and brush cutting with employees who are members of the Brotherhood of Maintenance of Way Employees. However, it is not the Carrier’s intention by this letter to prevent other employees from performing the foregoing work if related to, or incidental to, the performance of work associated with their positions.”

The Carrier asserts that the employees lacked the qualifications to remove hazardous materials, but the Claimants asserted in their claims that they had removed needles in the past. Regardless, the qualifications and ability of the Carrier’s forces to handle the work is a topic that should have been discussed if the General Chairman requested a conference. Cleanup work of this type is clearly encompassed within Side Letter No. 1 and the Carrier was required to provide the General Chairman of notice of its intent to contract out the work and an opportunity to meet and discuss the proposed contracting. By failing to do so, the Carrier violated the Agreement.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 30th day of September 2009.