Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 14049
Docket No. 13936
12-2-NRAB-00002-120005

The Second Division consisted of the regular members and in addition Referee Lynette A. Ross when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(BNSF Railway Company

STATEMENT OF CLAIM:

"1. That in violation of the parties governing Agreement, ATSF Rule 88 and Appendix No. 7 in particular, the BNSF Railway Company arbitrarily subcontracted work on the BNSF 1742 which contractually belongs to the Electrical Craft Employees represented by System Council 16 of the IBEW.

2. That accordingly, the BNSF Railway Company be ordered to compensate Electrical Craft Employees R. J. Loya and G. T. Fagan for the amount provided for under the terms of the parties controlling Agreement and as amended by PEB 219."

FINDINGS:

The Second 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 Claimants are Mechanical Department Electricians employed at the Carrier's Kansas City, Kansas, Argentine facility. On February 25, 2010, the Carrier issued an informational notice to the IBEW and three other Organizations informing them that the Carrier intended to outsource the harvesting of RCL (remote control locomotive) equipment from older SW and SD locomotives prior to sale or scrap. The letter stated that the Carrier was "targeting" 56 of the SD40-2's with the extended short hood as the recipients of the reclaimed RCL equipment.

According to the Organization, on or about November 4, 2010, the Carrier delivered BNSF 1742 for "modification and installation" of an RCL system at the RELCO shop in Albia, Iowa. The employees of RELCO, which is a privately owned company, installed the reclaimed RCL system on BNSF 1742.

On January 7, 2011, the Organization timely filed a claim on behalf of the Claimants. The Organization contended that the Carrier subcontracted the work in question without notification to the Organization in violation of Appendix No. 7, Article II, Subcontracting, of the September 25, 1964 National Agreement.

The Carrier denied the claim on February 25 and the Organization responded on March 10, 2011. On May 23, 2011, the Carrier reaffirmed its declination of the claim, informing the Organization that the harvesting and reinstallation of RCL equipment had never been performed by IBEW-represented Electricians. As evidence, the Carrier produced written statements from four Carrier Officers. A May 19, 2011 statement from Mechanical Manager Wilds reads, in pertinent part, as follows:

> "For the last six years I have been the Manger of locomotive electrical systems with Locomotive Staff and am responsible for the installation and maintenance of Remote Controlled Locomotive (RCL) equipment across BNSF. In response to your request for a statement concerning installs on the BNSF or former ATSF, to my knowledge our electricians have never harvested from locomotives for reinstall or installed new any RCL equipment. During my 33 year career I have worked in many running repair facilities and the back shop at Topeka as an electrician

and I can say with confidence that I have never witnessed or directed this work to be done on the BNSF or former ATSF."

On May 24, 2011, the parties discussed the claim in conference, with no mutually agreeable resolution attained. The Organization and the Carrier exchanged additional letters on September 13 and October 14, 2011, respectively. In its September 13, the Organization contended that the work subcontracted by the Carrier violated Rule 76, Radio – Controlled Units, of the BN Agreement.

On October 31, 2011, the parties agreed to a time limit extension for this claim, and others, regarding the deadline to docket the claims to the Board. Specifically, the parties mutually agreed to a deadline of February 1, 2012.

On January 26, 2012, in response to the Carrier's June 14, 2011 letter, the Organization sent the Carrier a nine page response with 52 pages of exhibits as additional argument and evidence in further support of its position. The Carrier received the information on January 30, 2012, and on that same day, prepared and issued a response. On February 1, 2012, the Organization filed its Notice of Intent to file an Ex-Parte Submission with the Second Division of the NRAB.

Preliminarily, the Carrier contends that the Organization's January 26, 2012 letter and all correspondence submitted thereafter should not be considered by the Board. The Organization failed to respond to the Carrier's October 14, 2011 letter until January 26, 2012, some three months later, during which time the Carrier's position on the matter stood unchallenged. The Carrier's procedural argument was raised in identical form in the subcontracting claim identified as Docket No. 13938 (Case No. NRAB-00002-120007) before this tribunal and involving these parties. In response, the Organization asserted the same arguments defending the procedural integrity of the instant claim as it averred in Docket No. 13938 (Second Division Award 14051).

For the sake of brevity, incorporated herein by reference are the parties' complete positions as regards the threshold question of whether the Organization's January 26, 2012 letter, and the parties' subsequent correspondence, should be considered by the Board in light of the Organization's February 1, 2012 filing of its Notice of Intent. As was our finding in Award 14051, here, the Board likewise holds

that for the same reasons as set forth in that Award, the evidence contained in the Organization's January 26, 2012 Submission is of limited probative value and the parties' evidence submitted after the February 1, 2012 filing date has not been considered by the Board.

Turning to the merits, it is evident that BN Agreement Rule 76, Radio – Control Units, does not support the Organization's position that the disputed work was improperly subcontracted by the Carrier. ATSF Agreement Rule 88, Electricians' Classification of Work, which does not appear to have been cited by the Organization during the on-property handling of the claim, likewise contains no mention of radio control locomotives or the removal of RCL systems. The Board finds that the record evidence properly before the Board fails to establish the Organization's claim that the work of installing the harvested RCL equipment on BNSF 1742 was contractually reserved to the Claimants pursuant to Rule 88, the applicable Rule in this case.

The Board found no probative evidence in support of the Organization's claim that the work of installing RCL systems has been historically or customarily performed by IBEW-represented employees. Although the record indicates that electrical craft employees have performed troubleshooting, maintenance, repairs, or modifications to RCL systems, the record is devoid of tangible evidence that such employees have performed the specific work of installing RCL systems.

Given our above findings, the Board is compelled to rule that the parties' Agreement was not violated when the Carrier contracted for the installation of RCL equipment on BNSF 1742. In this record, the Organization has not proven by substantial evidence that troubleshooting and/or repairing RCL systems constitutes the same work as installing RCL systems on locomotives.

As previously noted above, Rule 88 makes no mention of installing RCL systems, and the instant record lacks any evidence establishing that the work at issue in this claim has been customarily or historically performed by IBEW-represented employees. Consequently, the Board rules that the Carrier did not violate Rule 88 by subcontracting with RELCO for the installation of RCL equipment on BNSF 1742 at RELCO's Albia, Iowa, facility. Lastly, the Board rules that because the claimed work was not shown to have been covered by Rule 88, the Carrier was not required to

furnish advance notice, and its issuance of the February 25, 2010 informational letter did not violate the parties' Agreement.

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 Second Division

Dated at Chicago, Illinois, this 22nd day of October 2012.