

wrong forum
30th Street station

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31481
Docket No. MW-31366
96-3-93-3-362

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(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 (Northstar Company) to perform B&B plumber's work, i.e., installation of two (2) new compressors and air piping, at the 30th Street Station parking garage at Philadelphia, Pennsylvania on January 6, 7, 8 and 9, 1992 (System File NEC-BMWE-SD-3137 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 violations referred to in Parts (1) and/or (2) above, B&B Plumbers J. Scheck and F. Lawler shall each be allowed thirty-two (32) hours' pay at their respective straight time rates."

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 waived right of appearance at hearing thereon.

The Carrier instituted a \$65,000,000 rehabilitation of the 30th Street Station in Philadelphia, Pennsylvania.

The Carrier provided the Organization an eleven-page outline of what work it intended to contract out. After several discussions, the Carrier guaranteed the Organization 1206 man days of work on the project or payment in lieu thereof.

This dispute is based upon the contention that the Carrier contracted out work beyond that discussed in conference and beyond the 1206 man days agreed to. The entire on-property handling of the dispute as advanced by the Organization is based upon the theory that the Carrier violated "...the Scope Rule and the Work Classification Rules...."

Before this Board, the Carrier challenged our authority to adjudicate this dispute, citing an Agreement reached with the Organization on January 5, 1987, which created a Special Board of Adjustment that would:

"...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...."

The Organization counters Carrier's challenge to this Board's authority by contending there is no mandatory language in the Agreement which stipulates the parties must submit contracting out disputes to the Special Board of Adjustment.

In reviewing the parties' Scope Rule Agreement effective May 19, 1976, we note that in the second paragraph of Section A the parties stipulate:

"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...."

Item 2 of the claim before this Board alleges that the Carrier failed to give the Organization:

"...advance written notice of its plans to contract out said work."

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.

As stated in First Division Award 24072:

"The procedures established by the parties for the resolution of disputes...must be respected. Accordingly, we must dismiss this claim for handling...."

We must dismiss this claim.

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 23rd day of May 1996.