

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32156
Docket No. MW-31398
97-3-93-3-364**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(Brotherhood of Maintenance of Way Employees
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 or otherwise allowed outside forces to repair the damaged sprinkler head at the South Arcade at the 30th Street Station at Philadelphia, Pennsylvania on April 6, 1992 (System File NEC-BMWE-SD-3149 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 aforesaid violations, B&B Plumber F. Lawler shall be allowed one (1) hour's pay at his straight time rate.”**

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 claim here involves contracting of one hour's plumbing work and failure to give notice thereof in advance to the General Chairman. This work may or may not have been part of the rehabilitation work on the Carrier's 30th Street Station in Philadelphia. This, however, is not determinative here. Third Division Award 31481 (with companion Third Division Awards 31482, 31484 and 31485) found that claims of this nature are not properly before this Board, stating in pertinent part as follows:

"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.”

The Board finds this conclusion fully applicable in the dispute here under review and sees no reason to deviate or distinguish from it.

The Board is also presented with sustaining Third Division Award 31996, concerning a similar contracting claim initiated in 1990. Award 31996 makes only brief passing reference to the “Carrier’s argument that primary jurisdiction in Special Board of Adjustment No. 1005 [established under the January 5, 1897 Agreement] deprives this Board of concurrent jurisdiction.” Nevertheless, the Board here believes reliance still must be placed on the rationale presented in Award 31481.

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 13th day of August 1997.