

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44506
Docket No. 45904
21-3-NRAB-00003-200492**

The Third Division consisted of the regular members and in addition Referee Barbara C. Deinhardt 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 allowed outside forces (ABB) to perform Maintenance of Way work (inspection, maintenance overhaul and testing of oil circuit breakers) at Jericho Park SFC Station on August 15, 2018 and continuing (System File BMW-153672-TC AMT).**
- (2) The Agreement was further violated when the Carrier failed to comply with advance notification and conference provisions in connection with the Carrier’s intent to contract out the subject work.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the Organization requests that the contracting out of this work cease immediately and that Claimants R. Ryneski, R. Gubernat, M. Shertzer, B. Steele, M. Twinning, J. Jakubowski and C. DiGiacomo each be paid an amount equal to the total sum of money paid for every hour including overtime hours paid to the outside contractor in the performance of this work beginning August 15, 2018 and continuing.”**

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 Carrier assigned an outside company (ABB) to perform inspection, maintenance overhaul and testing of oil circuit breakers at Jericho Park SFC Station on August 15, 2018 and continuing.

The Organization argues that the (1) inspection, maintenance overhaul and testing of oil circuit breakers is work that is within the scope of the Agreement and the Carrier violated the Agreement when it assigned the work to outside forces; (2) the Carrier violated the Agreement when it failed to provide advance notice of its intent to contract the claimed work; (3) the Carrier provided no valid defense for its violations; and (4) the claim must be fully sustained including the requested monetary remedy to compensate Claimants for their loss of work opportunity as well as to preserve the integrity of the Agreement.

The Carrier argues that the work in question is not within the Scope Rule. Even before the 1987 Scope Rule was drafted, it was power company employees, not railroad employees, who were doing this work. Jericho Park is not a substation and the work performed is not routine maintenance. ET substation electricians do not perform maintenance on oil circuit breakers. Therefore this work is not within the Scope Rule.

Upon a review of the record, the Board finds that the Organization has not proved that this specific work is reserved to BMWE employees under the Scope Rule and therefore has not proved that the Carrier violated the Agreement when it subcontracted the work.

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 Third Division**

Dated at Chicago, Illinois, this 29th day of July 2021.