

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44560  
Docket No. MW-46225  
23-3-NRAB-00003-200918**

**The Third Division consisted of the regular members and in addition Referee I. B. Helburn 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 to perform Maintenance of Way work removing and replacing carpet on June 9, 2019 in Acela Lounge at Amtrak’s 30th Street Station in Philadelphia, Pennsylvania (System File BMW-156888-TC AMT).**
- (2) The Agreement was further violated when the Carrier failed to comply with 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, Claimant C. Pearson shall be compensated four (4) hours at the overtime rate of pay.”**

**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.**

**After having provided notice to the Organization on May 9, 2018, the Carrier used one outside contractor on a Sunday to perform four (4) hours of warranty work on carpet tiles in the entry hallway of the Acela Lounge in the 30<sup>th</sup> Street Station in Philadelphia, PA. The Organization filed a timely claim that was properly processed on the property without resolution and thereafter progressed to this Board for final and binding adjudication.**

**The Organization asserts that Rule 1-Scope was violated because Maintenance of Way employees have always done Sunday work at this location and no proper notice was given to the General Chairman, who did not agree that the work should have been subcontracted. That the work was warranty work done pro bono does not negate the Carrier's contractual obligation.**

**The Carrier avers that the Organization has not met its required burden of proof. This Board is said to lack jurisdiction over the claim by virtue of Paragraph D. of the Scope Rule. As to the merits, contrary to the Organization's assertion, notice dated May 9, 2018 was sent to the General Chairman. After no agreement was reached, the Carrier notified the Organization on June 29, 2018 that it would proceed with the warranty-covered work that was covered by an earlier notice. See on-property Third Division Award 42793.**

**The disputed work did not require written concurrence as Amtrak has a long history of contracting out carpet installation beyond that reserved to represented employees. The disputed work was not covered by Paragraph 1(A)(3) of the Scope Rule. Moreover, the work was for "purely aesthetic reasons," and the carpet tiles used were hour rest period and twenty-eight (28) hours on October 26, 2001 with only a one-hour rest period. In sustaining the claim, that Board wrote that "the Carrier's failure to beyond the training of represented employees. The Organization's reliance on Special Board of Adjustment 6671, Award No. 1 is misplaced. The work could not have been done under warranty had BMW-represented employees done the original installation. Warranty issues are properly considered in contracting-out disputes. See Third Division Award 40250. Finally, the claim is excessive in light of strong on-property precedent that missed work opportunities should be compensated at the straight-time rate.**

**Rule 1 -- Scope states in relevant part:**

**While it is not the intent of the parties to either diminish or enlarge the work being performed in a territory under this agreement, the work generally recognized as work ordinarily performed by the Brotherhood of Maintenance of Way Employees as it has been performed traditionally in the past in that territory will continue to be performed by those employees.**

**Paragraph 1.D. of Rule 1 states:**

**Any question with regard to contracting out work in accordance with the scope of this Agreement may be referred by either party to a Special Board of Adjustment created specifically and solely to hear and render decisions upon such questions. The special Board of Adjustment shall operate in accordance with the Agreement appended hereto as Attachment "A"**

**At the hearing, the Board was informed that the Carrier had agreed that the claim should be sustained based on the decisions in Third Division Awards 44508 and 44511 and that payment at the straight-time rate had occurred. The sole element of the dispute left for the Board to rule on is the question of the proper rate at which payment should be made. The Board recognizes the strong on-property precedent that missed opportunities for work are to be compensated at the straight-time rate.**

**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 8th day of October 2021.**