

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45377
Docket No. MW-47707
25-3-NRAB-00003-220544**

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 (PSC Industrial Outsourcing, LP - Philip West Industrial Services and HyroChemPSC) to perform Maintenance of Way work (cleaning and maintaining culverts) at Citi Steel at Mile Post 19.6 and Mile Post 18.94 on Amtrak PW line in Claymont, Delaware beginning on September 21, 2020 and continuing (System File BMWE-159677-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, all of the Claimants identified within our initial claim letter* shall each:**

“* receive an equal proportionate share for the all hours expended on the project, and payable at the Claimant’s respective rates. These are the earnings Claimants would have received had they been properly assigned. The Claimants are generally identified as assigned to Gang C-126. A joint check of Carrier records will determine actual claimants. Please forward force accounts for Gang C-126, for the dates outside forces were assigned in**

connection with this continuing claim, as well as any contracts, invoices and billing statements for cleaning and maintaining of culverts of (sic) at Amtrak's culvert located at Citi Steel.

Kindly advise me at the above address as to the pay period Claimants can expect their compensation, including any other appropriate relief, making the Claimants whole in every way for any loss resulting from Management's violations and that all lost credits and benefits normally due must be included with the Carrier's settlement.

Due to the Claimants lost work opportunities a monetary remedy is appropriate to compensate the claimants for their losses. A monetary remedy is also necessary to enforce the clear terms of the Agreement. The Organization requires that Amtrak pay 506 hours, split equally among the claimants, at their proper straight time and overtime rates of pay. This claim is herein presented, as defined in Rule 64(e) on a "continuing" basis, in addition to the 506 hours listed herein in the event the contractors are called back to this location.'"

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 Organization argues that beginning on September 21, 2020 and continuing, the Carrier allowed outside forces (PSC Industrial Outsourcing, LP - Philip West Industrial Services and HyroChemPSC) to perform Maintenance of Way work (cleaning and maintaining culverts) at Citi Steel at Mile Post 19.6 and Mile Post 18.94

on Amtrak PW line in Claymont, Delaware, instead of assigning its fully qualified Maintenance of Way employees. The work of cleaning and maintaining culverts is work historically performed by the Carrier's Maintenance of Way forces and is within the Scope of the Agreement. Maintenance of Way forces have performed this identical work in the past. There is no dispute that the Carrier failed to provide advance notification to the General Chairman of its intent to contract out the claimed work. Finally, the Carrier's contention that the work was not covered by the Scope Rule because it was part of a larger project funded by DelDOT for the new Claymont Station and meets the standard of a Major Construction Project, is unsupported by any evidence, the Organization asserts. There was no evidence that would support the Carrier's position that this work constituted a "Major Construction Project" or that the Carrier did not instigate, control, pay for or benefit from the claimed work. Additionally, the Carrier also failed to provide any evidence that this work was included within the Claymont Transit Labor Clearing Request.

According to the Carrier, the Organization did not meet its burden of proving that the Carrier violated the agreement when the outside contractor performed the work in question because Amtrak did not contract out the work being claimed. The State of Delaware contracted out the work as part of its major project constructing a new transit center. The new station is not one that Amtrak trains will utilize; the project will benefit SEPTA and Delaware Area Regional Transit. This work is, therefore, not Scope-covered and there was no violation of the Agreement. Additionally, as a major construction project, even if this Board found the work to be Scope-covered, Amtrak would not need concurrence of the Organization to assign it to a contractor.

Upon a review of the record as a whole, the Board finds that the Organization has not met its burden of proving that the Carrier contracted out the work. The Carrier notified the Organization on May 18, 2020 that the work of constructing a new transit center would be contracted out by a third party, i.e. the State of Delaware. While it is true that the culvert work was not specifically mentioned, it was only one small task in the course of a major construction of the new transit center. It would have been impossible for the Carrier to list every task that would be performed by the contractor, especially because the work was not being planned or performed by the Carrier. The work in question was not performed at the Carrier's request nor under its control. Because we find that the Carrier had no control over the assignment of the culvert work, we find that Award 39946 is controlling. In that case, this Board denied an appeal where the State of Connecticut paid for and controlled the project at issue and wrote the following:

[T]he record reflects that it was the State of Connecticut, rather than the Carrier that contracted the work to [the contractor]. The work was part of a state highway project instigated by the State of Connecticut at no cost to Carrier. There is no evidence that the Carrier controlled the assignment of the work in question Accordingly, since the Organization failed to prove that the Carrier contracted out the work, the claim must fail.

The Organization argues that since the Labor Clearance Notice lists a few limited areas of work reserved by Amtrak, including protection, at the discretion of the Project Manager, this proves that the Carrier could have reserved culvert work as well. We do not draw this same conclusion. There is no evidence that the Carrier knew at the time of the Notice that culvert cleaning would be done as part of the project. This was up to the discretion of the Project Manager, not the Carrier. It was the State of Delaware that contracted out the culvert work, not Amtrak.

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 19th day of December 2024.