

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45378
Docket No. MW-47708
25-3-NRAB-00003-220626**

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 assigned outside forces (M.S. Signs Inc. and Bulls Eye Installation Services) to perform site preparation, demolition, removal of old signs, installation of new signs, surveying and layout, replacement of existing signage and installation of new signage at the platform level, interior and exterior of the station and in the landscaped beds above street level in and around Wilmington Station beginning on December 7, 2020, instead of assigning its own forces thereto (System File BMWE-159990-TC AMT).**
- (2) The Agreement was further violated when the Carrier failed to properly comply with advance notification and conference provisions in connection with the Carrier’s intent to contract out the subject work, and/or when the Carrier failed to obtain the General Chairman’s written concurrence with this contracting.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants R. Searfass, T. Taylor, M. Haggard and R. Kauffman (and/or those proper Gang C-125 and C-126 employees revealed by a joint check of the Carrier records) shall be paid one hundred twenty-nine (129) hours, split equally among them, at their proper straight and overtime rates of pay, with the claim being**

augmented on a continuing basis to include all hours over the one hundred twenty-nine (129) hours listed herein.”

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 December 7, 2020, the Carrier allowed outside forces (M.S. Signs Inc. and Bulls Eye Installation Services) to perform Maintenance of Way work (site preparation, demolition, removal of old signs, installation of new signs, surveying and layout, replacement of existing signage and installation of new signage at the platform level, interior and exterior of the station and in the landscaped beds above street level) in and around Wilmington Station, instead of assigning Claimants, fully qualified Maintenance of Way employees. The Carrier’s alleged notice to the Organization was improper and the Carrier failed to participate in good-faith discussions to reach an understanding surrounding the contracted work. The Organization submits that the Carrier’s defenses are without merit.

According to the Carrier, the Organization has not met its burden of proving that the Carrier violated the Agreement. On May 18, 2020, Amtrak notified the Organization that it intended to use a contractor for a major construction project costing Amtrak over one million dollars. That project included the work at issue here, replacing existing signage and adding new signs in the station in Wilmington, DE. This was part of the Top 100 Station Signage Project. There is no dispute that Amtrak met with the Organization to discuss this project and no agreement was reached. The work was contracted out as planned. In addition to the clear language in the Scope Rule, there is long-standing arbitral support that a carrier is not required to piecemeal a project to give work to employees. Thus, the Carrier argues, there was no violation.

Upon a review of the record as a whole, the Board finds that the Organization has met its burden of proof. In the Labor Clearance Notice sent by the Carrier to the Organization, the Carrier did not mention that this was a major construction project or was an inextricable part of a larger major construction project. The only grounds listed in the Notice to support the subcontracting was that the work had to be done by the vendor to protect the warranty, that Amtrak forces lacked the skills, materials, tools and equipment to do the work, and that Amtrak forces were fully employed. None of these grounds were argued by the Carrier before this Board. Rather, the Carrier wrote in its submission, "The Organization's appeal must fail because the work Amtrak contracted out was part of a major construction project. Amtrak was replacing signs as part of a Top 100 Stations Signage project costing it over \$1 million. Under the Scope Rule, Amtrak does not need the Organization's concurrence to contract out work that is part of a major construction project even if that work is Scope-covered. It could not be expected to piecemeal the work at one station that was part of this major project. For this reason, this Board should deny the appeal."

There is nothing in the record that documents the Carrier's claim that this is a major construction project. While the Carrier asserts that the Wilmington Station work was "part of" the 100 Top Stations Signage Project that is over a million dollars, there is no documentation thereof. The Organization asserts that the Wilmington work took only 129 hours of work over a six-day period. In itself, it does not constitute a "major construction project." Further, it is not clear what it means that the Wilmington Station work was "a part of" the 100 Top Stations Signage project, such that it is to be considered an integral part of a major construction project that could not be handled separately. For example, was the whole 100-Station project bid out together or was the RFP/bid solicitation only for the Wilmington Station work? Was the 2020 Philadelphia signage project that was performed by the Organization members part of the same 100 Top Stations Signage Project? In what ways, if any, was the Philadelphia signage work different from the Wilmington signage work? The record does not answer any of these questions.

The Carrier argues that it is not required to piecemeal the project; if the 100 Top Stations Signage Project is considered one project, it can contract it all out. Even assuming arguendo that the Carrier has proven that the Wilmington project was part of the bigger project, we find that the cases cited by the Carrier are not apposite. For example, the Carrier cites Award 26850, in which this Board stated, "Finally, it has been well established by this Board that work contracted out will be considered as a whole. It will not be artificially divided into discreet units such that the employees could have

performed some of the work. (See Third Division Awards 6112 and 12317). Hence, Carrier was not required to ‘piecemeal’ the work in order to enable employees to perform some small portion thereof.” That Award and the others cited by the Carrier refer to a single project such as an oil spill cleanup, a tunnel repair, or replacement of water main piping in a railyard where the Organization is seeking to carve out one small piece. The Boards held that the Carrier need not break up a major project into piecemeal craft work. This is not the situation here. The Organization is seeking to do all of the signage work at the Wilmington Station. Treating each discrete location where identical signage work will be done as a separate project for contracting purposes is not the type of “piecemealing” that the cited Awards have ruled against.

We remand the case to the parties to determine the appropriate remedy. We find, however, that the lost work opportunity should be compensated at a straight time, not an overtime rate. The Board recognizes the strong on-property precedent that missed opportunities for work are to be compensated at the straight-time rate.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of December 2024.