

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45379
Docket No. MW-47844
25-3-NRAB-00003-220964**

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 (Service Master) to perform the station maintenance work of power washing Wilmington Station platforms and walkways on January 15, 2021, instead of assigning its own forces thereto (System File BMW-160226-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, R. Kauffman and A. Gliniak (and/or those proper Gangs C-125, C-126 and C082 employees revealed by a joint check of the Carrier records) shall be paid thirty (30) hours, split equally among them, at their proper straight and overtime rates of pay, ‘... 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.’**

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 On January 15, 2021, the Carrier assigned or otherwise allowed outside forces (Service Master) to perform Maintenance of Way work (power washing Wilmington Station platforms and walkways) at Wilmington Station, instead of assigning Claimants who are fully qualified Maintenance of Way employees. Power washing station platforms and walkways is within the scope of the Agreement. In fact, the BMW B&B employees are normally assigned the building and platform maintenance work, including power washing. No other craft, including the TCU, would provide that type of maintenance function. The Carrier failed to provide advance notice of the specific contracting out transaction involved here. 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. The work claimed in this case is power washing, which is not Scope-covered work. Power washing is not mentioned in the Agreement between the parties, and the Organization has provided no compelling proof that it is work historically performed by its members. Cleaning has been done by a variety of employees and contractors and is not covered by the scope of any particular craft. Therefore, it is not governed by the Scope and Work Classification Rule, and the notice and conference provisions contained therein do not apply. The Carrier was free to contract out this work, it contends. Furthermore, the Organization's request for thirty hours of pay at the straight and overtime rates is excessive.

Upon a review of the record as a whole, the Board finds that the Organization has met its burden of proof. There is nothing in this record to refute the statements submitted by the Organization that the work in question, at this location, has been performed historically by Maintenance of Way employees. This decision is based on the unique facts and circumstances of this case and is not to be cited as precedent. However, we find that the Carrier has persuasively argued that the contractor only had four employees performing the claimed work, not five, and so we limit the remedy to 24 hours paid 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.