

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45389
Docket No. MW-48245
25-3-NRAB-00003-230598**

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, beginning on January 10, 2022 and continuing, when it assigned outside forces (Beatty Management Group on behalf of Penn Station Partners PSP and its subcontractors) to perform Maintenance of Way work (building inspection, maintenance, construction and repair) at the Baltimore Penn Station (Carrier’s File 162370 AMT).**
- (2) The Agreement was further violated when the Carrier failed to notify the General Chairman, in writing, as far in advance of the date of the contracting transaction as is practicable and in any event not less than fifteen (15) days prior of its intention to use outside forces to perform the work referred to in Part (1) above and/or failed to obtain the written concurrence of the General Chairman before contracting out the work.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the Carrier shall now: ‘... immediately return all inspection, maintenance, construction, and repair work at Baltimore Penn Station to its BMWED represented forces. In addition, 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. Therefore, the Claimants shall receive an equal proportionate share for all straight time and overtime hours expended by the 2 outside forces beginning January 10, 2022 and continuing at their respective straight-time and**

overtime rates of pay. These are the earnings Claimants would have received had they been properly assigned.

A joint check of Carrier records will determine actual claimants. Please forward force accounts for Gangs: C032, C035, C037, C038, C039, C040, C072, C072A, C074, and for the dates outside forces were assigned in connection with this claim.

Kindly advise *** 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."

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.

On December 24, 2021, the Carrier sent a Notice to the Organization that the Baltimore Penn Station was subject to an executed Master Development Agreement between Amtrak and Penn Station Partners and associated long-term Ground Leases that include the scope for design, construction, and ongoing operations and maintenance responsibilities.

The historic station faces significant challenges in current operability and is not positioned for long-term sustainability as a major station along the NEC. The station and its vacant upper floors are well below a state of good repair, the passenger facilities are not meeting Amtrak standards, and the facility is not set up currently to accommodate future growth. To address the challenges of disrepair, capacity constraints, life safety challenges and

rail efficiency, Amtrak is implementing a comprehensive redevelopment and expansion through the Master Development Partnership for Baltimore Penn Station. The Baltimore Penn Station Master Development includes all phases of design into construction through a long-term ground lease with developer-led operations and maintenance of the historic and expanded station. This project scope includes a series of phased design-build project elements from early action SOGR projects, to core and shell and station reconfiguration, and finally station expansion and modernization to meet Amtrak's program requirements.

Work to be performed by the Contractor Forces:

- Comprehensive design, construction, station operations and maintenance in accordance with the ground leases...

The Master Developer will be responsible for the work elements outlined above, and will furnish labor, materials, and equipment (including rentals) to complete the work, as per the plans and drawings.

Work to be performed by Amtrak Forces:

- Amtrak forces will retain responsibility for rail operations, as well as ongoing operations and maintenance of rail infrastructure, including platforms at the station.
- Amtrak forces will continue to provide RWP protection as needed.

The average daily Amtrak workforce will not be impacted. Actual staffing of RWP for the project will be determined for construction in coordination with the Project Manager.

Amtrak is leasing the Baltimore Penn Station and adjacent properties to Penn Station Partners who will be responsible to deliver the full construction program and maintain the station in accordance with performance requirements for a term of 98 years. This is estimated to go in effect on January 10, 2021. [sic]

No Amtrak employees will be furloughed, as a result of this contracting out project.

The Organization did not request a meeting with the Carrier to discuss the issue before filing the instant time claim.

The Organization claims that beginning on January 10, 2022 and continuing, the Agreement was violated when the Carrier assigned outside forces (Beatty Management Group on behalf of Penn Station Partners PSP and its subcontractors) to perform Maintenance of Way work (building inspection, maintenance, construction, and repair) at the Baltimore Penn Station, instead of assigning its fully qualified Maintenance of Way employees. In response to the Carrier's argument that, because the Baltimore Penn Station was allegedly turned over to a Master Developer through a lease agreement, the work somehow no longer fell under the Agreement and that it was then permitted to contract the work without providing advance notice to the Organization, the Organization contends that these defenses were never proven by the Carrier. Despite numerous requests for the complete agreement between the Carrier and Penn Station Partners, the Carrier failed and refused to provide the document. Instead, the Carrier merely provided the Organization with a heavily redacted copy of the agreement wherein crucial pertinent information has been withheld. Further, the Master Development Plan was executed before the Organization had notice or any chance to discuss the issue with the Carrier. The Organization also notes that the Scope Rule mandates that "AMTRAK will use its best efforts in the negotiation of future leases...to retain the rights to fully maintain and repair said property."

According to the Carrier, the Organization failed to meet its burden of proof as the moving party in this case, as it failed to provide claimant names, hours or specific dates of the alleged violation. Furthermore, the Organization did not meet its burden of proving that the Carrier violated the agreement when the outside contractor performed the work in question. The claimed work is building inspection, maintenance, construction, and repair at the Baltimore Penn Station. This work, however, took place in a location that was turned over to a Master Developer through a lease agreement and therefore is not subject to the Scope Rule. Article IV of the Agreement exempts from Scope rule coverage work on any property not owned or operated by AMTRAK or to work on any property owned by AMTRAK which is leased to a lessee who under the lease assumes responsibility for work on the leased property. Section 4.02 of the Master Development Agreement stated: "Subject to the terms and conditions of each Project Lease and this Agreement, Amtrak will agree to provide the applicable Developer with development rights to the applicable Project Elements and such Developer will agree to serve as developer for such Project Elements and to develop such Project Elements in accordance with the terms of the applicable Project Lease and the applicable Project Documents." Article 4 of the Master Developer Agreement continues to spell out that in accordance with the applicable leases, the developer will assume responsibility of performing O&M and project work. Finally, the Carrier takes exception to the proposed remedy of the claim for several reasons. It has been established on-property

that the proper remedy for a missed work opportunity is at the straight time rate of pay and not at the overtime rate of pay as claimed in this case.

Upon a review of the record as a whole, the Board finds that the Organization has not met its burden of proof. The Scope Rule provides, "This Scope Rule does not apply to work on any property owned by AMTRAK which is leased to a lessee who under the lease assumes responsibility for work on the leased property. Property owned or operated by AMTRAK necessary for the operation of the railroads coming under the Scope of this Agreement will not be leased for the purpose of evading the application of this Agreement." While a conference between the parties could have helped answer questions about the scope of the lease and the reasons for redaction, the Organization chose to file the claim before requesting such a conference. The Organization does not appear to question that there is in fact a major development project going on involving Baltimore Penn Station. We take arbitral notice of numerous news articles about the redevelopment project. Nor has the Organization proven that the purpose of the lease was to evade the Agreement. The massive scope and duration of the project belie such a purpose.

The only question is whether the portions of the Master Development Plan disclosed by the Carrier were sufficient to establish that the developer "assumes responsibility for work on the leased property." While the question is a close one and a fuller record could have dispelled some questions and suspicions, we find that based on this record and the particular circumstances of this case, the Carrier did provide sufficient proof. The Plan clearly reads that "the developer will assume responsibility of performing [Operations and Maintenance] and project 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 19th day of December 2024.

LABOR MEMBER'S DISSENT
TO
AWARD 45389
(Referee Barbara Deinhardt)

I must dissent to the Majority's decision. Specifically, the Board held:

“The only question is whether the portions of the Master Development Plan disclosed by the Carrier were sufficient to establish that the developer ‘assumes responsibility for work on the leased property.’ While the question is a close one and a fuller record could have dispelled some questions and suspicions, we find that based on this record and the particular circumstances of this case, the Carrier did provide sufficient proof. The Plan clearly reads that ‘the developer will assume responsibility of performing [Operations and Maintenance] and project work.’”

The issue with the Majority's holding is that the Carrier refused to provide a complete copy of the lease. Without the full document, the Board could not possibly reach the above conclusion. Especially considering the language the Carrier relied on in the lease was Section 4.02, which reads:

“(a) Subject to the terms and conditions of each Project Lease and this Agreement, Amtrak will agree to provide the applicable Developer with development rights to the applicable Project Elements and such Developer will agree to serve as developer for such Project Elements and to develop such Project Elements in accordance with the terms of the applicable Project Lease and the applicable Project Documents.”

Without the full document, there is no way of knowing what kind of control the Carrier maintains over this location. In addition, this Board has already ruled on the question of incomplete lease agreements in Third Division Awards 42325 and 42999.

For these reasons, I must dissent.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John Schlismann', with a long horizontal flourish extending to the right.

John Schlismann
Labor Member