Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12821
Docket No. 12753
95-2-93-2-109

The Second Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists
(and Aerospace Workers
(
(CSX Transportation, Inc. (former
(Baltimore and Ohio Railroad Company)

STATEMENT OF CLAIM:

"1. That the Carrier violated Article II, Sections 2 and 3 of the September 25, 1964 Mediation Agreement when they, the Carrier, CSXT former B&O Railroad Company, subcontracted rebuilding pumps and motors to Tri-State Hydraulic and Electric Service, Inc., of Bridgeport, West Virginia.

2. That the Carrier be ordered to compensate Machinists J.A. Small, D.L. Duncan, M.H. McKee, W.E. Jefferson, J.R. Elliott, D.L. Wortham, J.E. Seeders, Jr., R.F. Shuyler, Jr., D.D. DePriest, L.M. King for an amount equal to the amount paid to the subcontractor for all labor costs involved.

3. The work in dispute is work subject to the advance notice requirements. Therefore, we are claiming in addition to the claim, the man hours billed, a payment of ten (10) percent."

FINDINGS:

The Second 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 waived right of appearance at hearing thereon.

The genesis of this dispute is found in a letter dated April 26, 1989, from the Organization in which it is alleged that:

> ". . . during the period of the effective date of the transfer of work as of May 4, 1987 up to the present time, the carrier has been involved in the subcontracting of work from the carrier's Fairmont Equipment Repair facilities."

No specifics of such alleged subcontracting were identified by the Organization. Rather the generalized letter of April 26, 1989 was accompanied by a second letter, also dated April 26, 1989, in which the Organization requested "... the reasons and supporting data in connection with the subcontracting of rebuilding pumps and motors to Tri-State Hydraulic and Electric Service, Inc." Again there were no specifics, no dates, no particulars, nothing to identify the alleged subcontracting with the single exception of a company name where the subcontracting work was allegedly performed. This second April 26 letter initiated a penalty claim on behalf of the ten Claimants named in the Statement of Claim supra and asked that they be compensated "... an amount equal to the amount paid to the subcontractor for all labor costs involved..." plus payment of an additional 10% because no advance notice of subcontracting had been given by the Carrier to the Organization.

The next item found in the case record of this dispute consists of a letter from the Carrier to the Organization dated May 3, 1990, which referred to the Organization's "... letters of April 26, 1989, and our conference of April 30, 1990..." relative to the alleged subcontracting. In this letter, the Carrier stated that the contested work had not been performed at Fairmont Shop because the Carrier did not have the equipment necessary to do such work and that, in any event, the subcontracted work on electric starters and/or motors was not work which accrued to Machinists. This letter contained references to and attachments which purportedly showed that "... this type of work has been historically subcontracted."

By letter dated May 8, 1990, the Organization responded to the Carrier's May 3 letter and made reference to a particular paragraph of the Memorandum of Agreement which became effective January 4, 1988 to accomplish the coordination of repair work at Fairmont. It contended that the work in dispute accrued by agreement to the Machinists craft. Still there were no specifics, no dates, nothing to identify the particulars of the complained of subcontracting.

The next piece of on-property handling is found in the Carrier's May 30, 1990 letter in which it summarizes its previously stated position. No further discussion or statement of positions occurred on the property.

The dispute was subsequently listed for presentation to Special Board of Adjustment No. 570 which was the agreed-upon dispute resolution tribunal for issues involving subcontracting of work. The case had not been heard by SBA No. 570 and, by agreement of the interested parties, was withdrawn therefrom and, by letter dated June 25, 1993, was listed for presentation to this Board.

That was the sum total of the on-property handling of this particular dispute.

The Board reviewed the applicable provisions of the September 25, 1964 Agreement which deal with the issue of subcontracting work. We have also studied the extensive Memorandum of Agreement between the parties which accomplished the coordination of Engineering (M of W) Department equipment repair work and employees. We are unable, however, to find -- on the basis of this case record -- any violation of either the September 25, 1964 Agreement or the Coordination Agreement which became effective January 4, 1988. In fact, we are unable -- on the basis of this case record -- to identify any item of work which was, in fact, subcontracted.

The Organization, as the moving party in this dispute, has the initial and fundamental burden of identifying the specifics and particulars of the incident or incidents which it alleges are in violation of the negotiated Agreements. In its initial letter to the Carrier, it contended that subcontracting violations had allegedly been occurring "... during the period of the effective date of the transfer of work . . . up to the present time..." and yet it did not identify even one specific incident which had allegedly occurred during that two-year period.

The Board cannot ignore the fundamental responsibility of the moving party to a dispute to make a prima facie case of violation before the burden of responsibility to act shifts to the respondent party. As was ruled by SBA No. 570 in Award 1060:

> "It is not enough to merely detail arguments expressing disagreement with a position taken. To be persuasive, some articulation, supported by at least minimal elements of evidence, must be made. Such articulation and evidence is absent here."

Likewise in this case, there is no sufficient identification of wrongdoing present here to permit a determination of Agreement violation. Therefore, the claim is denied.

AWARD

Claim denied.

O R D E R

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 Second Division

Dated at Chicago, Illinois, this 26th day of January 1995.