

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION/IBT,
141475 Gardenbrook Rd.
Novi, MI 48375**

Plaintiff,

V.

**NATIONAL RAILROAD PASSENGER
CORPORATION,d/b/a AMTRAK**
60 Massachusetts Avenue, N.E.
Washington, D.C. 20002

Defendant.

Case No.: 1:18-cv-557

COMPLAINT

The Brotherhood of Maintenance of Way Employes Division/IBT(“BMWED”) brings this Complaint against the National Railroad Passenger Corporation, (“Amtrak” or “Carrier”), for a declaratory order that Amtrak has violated Section 2, Seventh of the Railway Labor Act (“RLA”), 45 U.S.C. §§ 152, Seventh, by unilaterally changing and abrogating agreements between the parties by contracting-out certain work in blatant disregard for a collective bargaining agreement provision reserving that work to BMWED represented employees unless the Union concurs in the plan to contract-out.

Parties

1. The BMWED is an unincorporated labor association that maintains its headquarters in Novi, Michigan. The BMWED is the duly designated representative for collective bargaining

under Section 1 Sixth of the RLA, 45 U.S.C. §151 Sixth, of employees of Amtrak working in the class or craft of maintenance of way employee. On January 1, 2005, the BMWED became an autonomous division of the International Brotherhood of Teamsters. Prior to that date, the BMWED was an international union founded in 1887 that went by the name Brotherhood of Maintenance of Way Employees (“BMWE”). BMWED provides representation to the Amtrak employees it represents though the BMWED Pennsylvania Federation (“PennFed”).

2. Amtrak is a rail carrier as that term is defined in Section 1, First of the RLA, 45 U.S.C. §151, First. Amtrak conducts rail operations throughout the contiguous United States and portions of Canada. Amtrak is a partially government-funded corporation that maintains its headquarters in Washington, DC.

Jurisdiction and Venue

3. This Court has jurisdiction over this complaint pursuant to 28 U.S.C. §§ 1331 and 1337 because it arises under the RLA, an act of Congress regulating interstate commerce. The Court has jurisdiction over the request for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 (b) and (c) because Amtrak owns and operates lines of railroad within this District and is headquartered in this district.

Statement of Claim

5. Among other things, Amtrak’s maintenance of way employees represented by BMWED are responsible for constructing, repairing, rehabilitating, upgrading, renewing, inspecting and maintaining the Carrier’s track and right of way, and electric traction/catenary system, as well as bridges, buildings, and other structures.

6. BMWED and Amtrak, are parties to a collective bargaining agreement that establishes and governs the rates of pay, rules, and working conditions of Amtrak employees working in the Maintenance of Way craft/class on the Northeast Corridor (“CBA”). Amtrak currently employs approximately 2700 maintenance of way employees who are covered by the CBA.

7. The “Scope Rule” of the CBA as amended in 1987, provides that the CBA is the agreement between Amtrak and its employees represented by the BMWED who perform work “generally recognized as Maintenance of Way work, such as inspection, construction, repairs and maintenance of water facilities, bridges, culverts, buildings and other structures, tracks, fences, and roadbed, including catenary system, third rail, substations and transmission in connection with electric train operation ... and shall govern the rates of pay, rules and working conditions of such employees”.

8. The Scope Rule further states that if Amtrak seeks to contract-out Scope Rule covered work, Amtrak shall notify the appropriate BMWED General Chairman at least fifteen days in advance of doing so. However, Section 1 of the Scope Rule provides that “[e]ffective March 2, 1987, the following work may not be contracted out without the written concurrence, except in the case of emergency, of the appropriate General Chairman. (1) Track inspection, maintenance, construction, or repair from four (4) inches below the base of the tie up, and undercutting (2) Inspection, maintenance, construction or repair of third rail systems and the electric traction catenary wire system including transmission wires, poles, appurtenances, which are integrally associated with overhead bridges or similar structures....”

9. Pursuant to Section 1. B of the Scope Rule, General Chairman concurrence for contracting-out is not required “where time of completion for the work, as determined prior to the start of construction projects...cannot be met for the following reasons: (1) Lack of available

skilled manpower....(2) Lack of essential equipment. However, Side letter No. 2 to the CBA, dated January 22, 1987, provides that this Section 1. B exception to the requirement for General Chairman approval for contracting-out “will not apply to work of the scope and magnitude historically performed by members represented by the BMW E”. Side Letter No. 2 also states that “it is the Carrier’s intent to preserve work of the scope and magnitude historically performed by members of the BMW E for the Carrier as of January 1, 1987, or prior thereto”.

10. On and prior to January 1, 1987 all track construction, inspection, maintenance, and repair and all installation of ties, rail, switches and other track components on Amtrak property covered by the CBA has been done by BMWED forces, except when BMWED has provided written concurrence to the use of other than BMWED forces.

11. On and prior to January 1, 1987 all construction, inspection, maintenance, and repair of third rail systems and the electric traction catenary wire system on Amtrak property covered by the CBA has been done by BMWED forces, except when BMWED has provided written concurrence to the use of other than BMWED forces.

12. On October 9, 2017, Amtrak wrote to the General Chairman of the PennFed informing him that Amtrak has plans to construct a new high speed rail building and new storage tracks to service new high speed train sets near the existing Acela high speed rail building and storage tracks at Amtrak’s Sunnyside Yard, New York; and that Amtrak plans to use a contractor, rather than its own employees, to do much of the work for that project. Part of the work that Amtrak plans to contract-out is construction of new tracks and of the electric traction catenary system. By letter dated December 7, 2017, Amtrak advised the PennFed General Chairman that the track construction work to be done by the contractor would constitute 7684 feet of track including 3006 rail ties, and the electric traction construction work would be the for

the overhead catenary system for the traction power for the new track. Amtrak said that the project would take about three years to complete and estimated that the average daily complement of contractor workers would range from 70-180 for all aspects of the project.

13. Amtrak's October 9, 2017 letter regarding the Sunnyside Yard project explained the Carrier's decision to use a contractor for the project work by asserting that: special skills, certifications, materials, tools and/or equipment are required for the project; use of a contractor would allow Amtrak to take advantage of warranties; Amtrak forces assigned to the area are performing regularly assigned work; the work involved is major construction purportedly covered by Section 1. A (3) of the Scope Rule; and that Amtrak supposedly lacks available manpower, so it may use a contractor under Section 1. B (1) of the Scope Rule.

14. On October 9, 2017, Amtrak wrote to the General Chairman of the PennFed informing him that Amtrak has plans to construct a new high speed rail building and new storage tracks to service new high speed train sets near the existing Acela high speed rail building and storage tracks at Amtrak's Ivy City Maintenance Terminal Yard; and that Amtrak plans to use a contractor, rather than its own employees, to do much of the work for that project. Part of the work that Amtrak plans to contract-out is construction of new tracks and of the electric traction catenary system. By letter dated December 7, 2017, Amtrak advised the PennFed General Chairman that the track construction work to be done by the contractor would constitute 4016 feet of track including 2008 rail ties, and the electric traction construction work would be for the overhead catenary system for the traction power for the new track. Amtrak said that the project would take about three years to complete and estimated that the average daily complement of contractor workers would range from 15-60 for all aspects of the project.

15. Amtrak's October 9, 2017 letter regarding the Ivy City project explained the

Carrier's decision to use a contractor for the project work by asserting that: special skills, certifications, materials, tools and/or equipment are required for the project; use of a contractor would allow Amtrak to take advantage of warranties; Amtrak forces assigned to the area are performing regularly assigned work; the work involved is major construction purportedly covered by Section 1. A (3) of the Scope Rule; and that Amtrak supposedly lacks available manpower so it may use a contractor under Section 1. B (1) of the Scope Rule.

16. On November 24, 2017, Amtrak wrote to the General Chairman of the PennFed informing him that Amtrak has plans to create a new track staging yard near 72nd Street New York, New York along the Empire Line that will include inspection, maintenance, repair and replacement of track running from the 72nd Street Yard through the "AE Tunnel" to the Spuyten Duvil Bridge and over the Harlem River to the Bronx, New York, and that Amtrak plans to use a contractor, rather than its own employees, to do much of the work for that project. Part of the work that Amtrak plans to contract-out is inspection, maintenance, repair, and construction of new tracks and of the electric traction catenary system. The track construction work to be done by the contractor would involve replacement of approximately 7 miles of rail, approximately 15,000 rail ties (which is about 7 miles of ties), installation of 2 switches, and resurfacing of 20 miles of track; the contractor would also do the overhead catenary system work for that segment of track. Amtrak estimated that contractor would use approximately 40 employees to perform the track, electric traction and bridge and building work for the project.

17. Amtrak's November 24, 2017 letter regarding the 72nd Street/Empire Line project explained its decision to use a contractor for the project work by asserting that Amtrak forces assigned to the area are performing regularly assigned work, so they cannot complete the work "in the time frame allotted"; and that it "is not required to piecemeal particular work aspects of

major projects”.

18. By correspondence and in meetings after Amtrak’s letters about the three projects, the PennFed objected to the plan to contract-out the track and electric traction/catenary construction work for the projects, noting that under the Scope Rule Section 1. A (1) and (2), Amtrak may not contract-out such work without the written concurrence of the General Chairman, except in the case of an emergency (which was not claimed by Amtrak). BMWED also noted that Side Letter No.2 of the CBA states that the Section 1. B exception to the requirement for General Chairman approval for contracting-out “will not apply to work of the scope and magnitude historically performed by members represented by the BMWED”, and that the parties intended to preserve to BMWED forces work of the scope and magnitude they historically performed as of January 1, 1987, or prior thereto. BMWED told Amtrak that the track and electric traction construction, inspection, maintenance, and repair work for these projects is clearly work of the scope and magnitude historically performed by BMWED forces on and prior to January 1, 1987. BMWED further asserted that all of Amtrak’s other purported justifications for contracting-out the track and electric traction construction, inspection, maintenance, and repair work for these projects were plainly not permissible bases for Amtrak to contract-out work without the concurrence of the General Chairman.

19. By letter dated February 5, 2018 BMWED reiterated to Amtrak the Union’s objection to the plan to contract-out track and electric traction construction, inspection, maintenance, and repair work for the Sunnyside Yard and Ivy City projects. Among other things, that letter again asserted that such work could not be contracted-out without the PennFed General Chairman’s concurrence, and that such work was of the scope and magnitude historically performed by BMWED forces on and prior to January 1, 1987. BMWED further informed Amtrak that on and

before 1987, no tie, rail, catenary pole, catenary wire or other track component had been installed by a contractor without concurrence of the General Chairman; and that when Amtrak constructed new storage and maintenance facilities for the Acela high speed rail train sets in 1997 at the same locations, BMWED forces did the track and catenary work so the work was clearly of the scope and magnitude historically performed by BMWED forces on and prior to January 1, 1987. BMWED also stated that even if the Section A. 1. B. (1) exception for lack of available skilled man power was applicable, it was absurd to contend that Amtrak lacks sufficient manpower to construct about 2 miles of track and related catenary work (especially for projects slated to take three years to complete). BMWED also noted that the Section A.1.B (3) exception major construction or non-rail projects expressly applies to bridge and building work only, and is therefore plainly inapplicable to the contracting-out of track and electric traction work. The February 5 letter also stated that Amtrak's other supposed justifications for contracting-out the track and electric traction work were clearly irrelevant. BMWED concluded that it remained willing to discuss Amtrak's plans, but Amtrak should not bring contractors on the property to perform the track and electric traction work without an agreement.

20. By letter dated February 7, 2018 BMWED reiterated to Amtrak the Union's objection to the plan to contract-out track and electric traction construction, inspection, maintenance, and repair work for the 72nd Street/Empire Line project. Among other things, that letter again asserted that such work could not be contracted-out without the PennFed General Chairman's concurrence, and that such work was of the scope and magnitude historically performed by BMWED forces on and prior to January 1, 1987. BMWED further informed Amtrak that since on and before 1987, no tie, rail, catenary pole, catenary wire or other track component had been installed by a contractor without concurrence of the General Chairman; and

that replacement of rail and ties constituting about 7 miles of track and resurfacing about twenty miles of track is certainly within the scope and magnitude of work historically performed by BMWED forces on and prior to January 1, 1987. The February 7 letter further stated that even if the Section A. 1. B. (1) exception for lack of available skilled man power was applicable, the work involved was not even arguably outside the norm for track construction by Amtrak's BMWED forces, and that Amtrak's acknowledgment that the contractor would use about 40 employees for the track and electric traction construction, maintenance and repair work, as well as bridge work, demonstrated that Amtrak has sufficient forces to complete the project. As for Amtrak's claim that time considerations required use of a contractor, BMWED stated that not only are considerations not an exception under the Scope Rule, improvement of the track segment involved had been identified as necessary as far back as 2005 and had been planned for many years. The February 7 letter also stated that Amtrak's other supposed justifications for contracting-out the track and electric traction work were clearly irrelevant. BMWED concluded that it remained willing to discuss Amtrak's plans, but Amtrak should not bring contractors on the property to perform the track and electric traction work without an agreement.

21. As of March 1, 2018, Amtrak had not responded to BMWED's letters of February 5 and 7, so BMWED again wrote to Amtrak. BMWED's March 1, 2018 letter reiterated points made in the earlier correspondence and meetings, and repeated that the Union is willing to work with Amtrak to facilitate performance of the work at issue at the three projects with BMWED-represented forces, but rejected Amtrak's claims that it may move forward as planned over the objection of the General Chairman. BMWED advised Amtrak that if it proceeds to contract-out the track and electric traction work without the General Chairman's concurrence, Amtrak would violate Section 2 Seventh of the Railway Labor Act and Amtrak would ultimately be responsible

for the consequences of its unlawful acts.

22. Notwithstanding the Union's position that Amtrak would violate the RLA if it proceeded without the General Chairman's concurrence, BMWED's March 1 letter offered to arbitrate the dispute in expedited arbitration before a "parties pay" Special Board of Adjustment with the understanding that Amtrak would refrain from contracting-out the work unless and until it obtains a favorable decision in arbitration. But, BMWED further stated that if Amtrak refused the offer, the Union would retain all rights it has to respond as it deems necessary to Amtrak actions that violate the RLA.

23. By letter dated March 2, 2018, Amtrak repeated its purported justifications for its plans to contract-out the track and electric traction construction work for the Sunnyside Yard and Ivy City projects, and stated that the Carrier intends to proceed with contracting-out the work described in Amtrak's October 9, 2017 letters.

24. As of the date of this complaint, Amtrak has not responded to BMWED's offer to arbitrate the dispute.

CAUSE OF ACTION

25. BMWED incorporates by reference, as if fully set forth herein, each and every allegation of paragraphs 1 through 24.

26. Section 2, Seventh of the RLA, 45 U.S.C. §152, Seventh, provides: "No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title."

27. Section 6 of the RLA, 45 U.S.C. § 156, provides:

Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in the agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

28. The Scope Rule of the CBA, and Side Letter No. 2 unambiguously provide that track and electric traction/catenary construction, inspection, maintenance and repair work may not be contracted-out without the written concurrence of the appropriate General Chairman, except in cases of emergency. There is no emergency in the instant case.

29. The exception to the Scope rule requirement for General Chairman concurrence for contracting-out in circumstances when the time for completion of the work determined prior to the start of the project cannot be met due to lack of available skilled manpower or lack of essential equipment under Section 1. B of the Scope Rule is plainly inapplicable to the plan to contract-out the track and electric traction/catenary construction, inspection, maintenance and repair work for the Sunnyside Yard, Ivy City and 72nd Street/Empire Line projects because the work involved is "work of the scope and magnitude historically performed by members of the" Union under Side Letter No. 2.

30. All of Amtrak's purported justifications for contracting-out the track and electric traction/catenary construction, inspection, maintenance and repair work for the Sunnyside Yard, Ivy City, and 72nd Street/Empire Line projects are without any basis in the collective bargaining agreement, and Amtrak's claim of a right to contract-out that work are specious.

31. By utilizing a contractor and contractor forces to perform the track and electric traction/catenary construction, inspection, maintenance and repair work for the Sunnyside Yard, Ivy City and 72nd Street/Empire Line projects, without the concurrence of the General Chairman, Amtrak would effectively reject, abrogate, and change its agreement with BMWED not “in the manner prescribed in such agreement[] or in section 156 of” the RLA, and therefore in violation of Section 2, Seventh of the RLA.

REQUEST FOR RELIEF

WHEREFORE, the BMWED respectfully requests that the Court

- A. DECLARE that by utilizing a contractor and contractor forces to perform the track and electric traction/catenary construction, inspection, maintenance and repair work for the Sunnyside Yard, Ivy City, and 72nd Street/Empire Line projects, Amtrak would effectively reject, abrogate, and change its agreements with BMWED in violation of Section 2, Seventh of the RLA;
- B. GRANT the BMWED reasonable attorneys’ fees and the costs of this action;
- C. GRANT the BMWED all other relief that the Court deems just and proper.

Respectfully submitted,

/s/ Richard S. Edelman

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