

IBEW
RAILROAD DEPARTMENT

Subcontracting
Disputes

FILING OF CLAIMS

- All “Contracting Out” claims filed under the September 1964 Agreement are filed by your General Chairmen.
- However, you, as a local representative, are probably the most important link in this chain. For you are the one who provides the information to your General Chairman that forms the basis for the claim.

Article II “Subcontracting”

September 25, 1964 National Agreement

- Is the controlling authority for subcontracting activities on most railroads
- Amended –December 4, 1975 National Agreement, Article V, and November 27, 1991 Imposed Agreement Article VI
- * NOTE – Most, but not all, railroads are covered by the September 1964 Agreement. Please review your specific agreement to see what rules apply to contracting out on your railroad.

Article II

Covered Work

- Classification of Work Rules
- Scope Rules
- Other Work historically performed & generally recognized as work of the craft
- Maintenance & repair work which has been historically (not necessarily exclusively) maintained & repaired by Carrier's own employees
- Such work will not be contracted except in accordance with the provisions of Sections 1 through 4 of Article II
- In determining whether work falls under Article II, the **practices at the facility** involved will govern

Article II

Sections 1 through 4

- **Section 1** – Applicable Criteria
- **Section 2** – Advance Notice – Submission of Data – Conference
- **Section 3** – Request for Information When No Advance Notice Given
- **Section 4** – Establishment of Subcontracting Expedited Arbitration Panels

Article II, Section 1

“Applicable Criteria”

- Subcontracting of work will be done only when genuinely unavoidable because:
 - 1) **Managerial Skills** not available on the property
 - 2) **Skilled Manpower** not available on the property
 - 3) **Essential Equipment** not available on the property
 - 4) **Required Time of completion** cannot be met with the skills, personnel or equipment
 - 5) **Greater Cost** advantage
 - Provided the cost advantage is not based on a standard of wages below the prevailing wages paid in the area for the type of work being performed
 - No employees assigned at the facility will be furloughed as a result of subcontracting

Article II, Section 2

“Advance Notice”

- Carrier must provide General Chairman a Notice of Intent to subcontract work
 - Reasons & Supporting Data in order to determine whether the criteria has been met
- Advance Notice not required for “minor transactions”
 - Minor Transaction defined as 8 man-hours or less
- General Chairman must notify the Carrier within ten days with any desire to discuss the proposed action
- If no agreement is reached during conference:
 - Expedited Arbitration Panel (if established)
 - Special Board of Adjustment or Public Law Board

Article II, Section 3

“Request for Information When No Advance Notice Given”

- General Chairman must request the “reasons” & “supporting data” for subcontracting of work
- Carrier must furnish General Chairman such information promptly
- Conference held at a mutually acceptable time and place (if requested)

Article II, Section 4

Establishment of Subcontracting Expedited Arbitration Panels

- Consist of neutral arbitrators at strategic locations throughout United States, either by Carrier or region
- Panel shall have exclusive jurisdiction of disputes on Carrier's system or geographical region
 - Panel members hear cases on a rotating basis
 - Serve two year terms
- Arbitrator services directly compensated by the parties

“Remedy”

Subcontracting Disputes

- Article II, Section 11
 - Arbitrators decision shall not exceed wages lost and other benefits necessary to make Claimant(s) whole
 - Amounts awarded shall be divided equally among the claimants, or otherwise distributed upon an equitable basis

“Remedy”

Subcontracting Disputes (2)

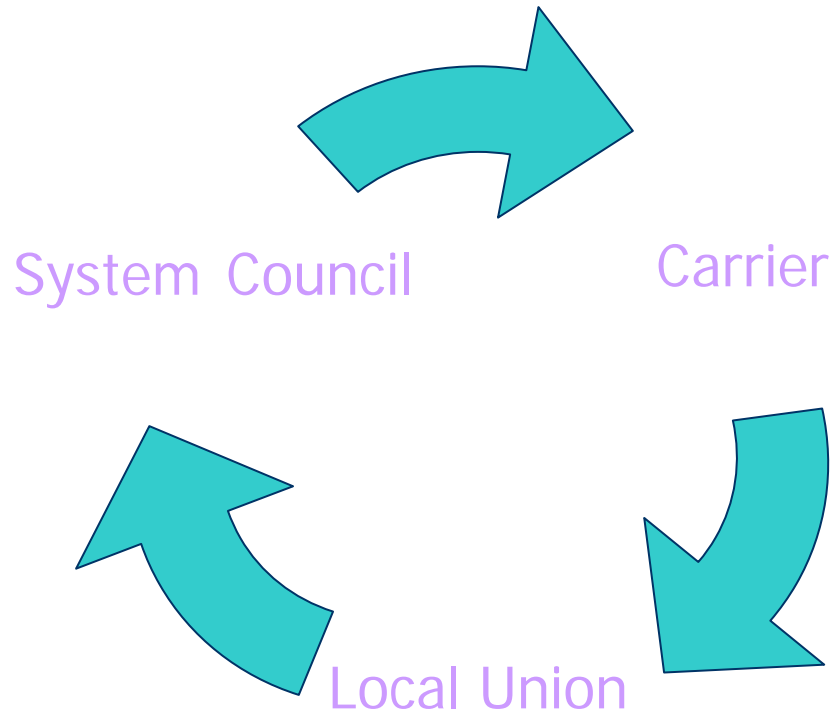
- Violation of Advance Notice requirements of Section 2 (in non-emergency situations)
 - 50% of man-hours billed multiplied by the average straight-time hourly rates of employees who would have done the work
- Violation of Advance Notice requirements of Section 2 and wrongfully contracted out work, multiplier shall be 10% rather than 50%
 - 110% of man-hours billed multiplied by the average straight-time hourly rates of employees who would have done the work

Processing Disputes

Article II

- Disputes not progressed in the “usual manner” under Sec 3 of the RLA
- Disputes handled directly between the General Chairman or his representative, and Carrier’s highest designated officer
- Claims for wage loss should be filed promptly and within sixty days

Investigating and Processing Subcontracting Disputes



Investigation

Five “W’s”

- Who?
- What?
- Where?
- When?
- Why?

Who?

- Identify Claimant(s) who would & could have done the work had it not been contracted out
 - full name, job title, rate of pay, years of service, rest days, and working hours
 - signed statements indicating Claimant's availability and ability to perform the work either during normal working hours, on overtime, or on a rescheduling basis
- Identify the Contractor(s)
 - name of company, number of workers, license plate numbers, etc...
- Identify all potential witnesses
 - Signed statements establishing the details of the dispute
- Identify any management personnel involved

What?

- What work was contracted out?
 - Be Specific!
- Furnish any and all information that can be used to properly identify the contracting out of work
 - Signed statements
 - Invoices
 - Purchase orders
 - Carrier records
 - Pictures
- Identify any extenuating circumstances concerning the alleged violation.

Where?

- City, State
 - Yard
 - Shop
 - Service Track
 - Locomotive
-
- Make sure you have an accurate description of the location

When?

- Date or Timeframe
- Time
- Place
- Man-hours

- Be as specific as possible

Why?

- Why did Carrier subcontract work, or violate the agreement?
 - Emergency?
 - Safety?
 - Technology?
 - Manpower?
 - New facility?
 - Extenuating Circumstances?
- Why is the subcontracting occurrence a viable claim?
 - Work generally recognized as work of the craft?
 - Work historically maintained by the IBEW?
 - Past practice at the facility?
 - Violation of Agreement (Classification of Work/Scope Rules)?

Local Chairman Responsibilities

- Properly investigate the dispute
- Properly develop the facts of the dispute
- Provide the General Chairman or System Council Representative with the complete claim information together with all related documentation
- Be timely!
- Keep the Claimant(s) and Local Union membership updated as to the progress of the matter

How to Win

- The claim will only win if we conduct our investigation thoroughly
- In most cases, the System Council only has the written information that the Local Union or Carrier has provided
- Follow up with your investigation and provide any additional information to the System Council

QUESTIONS

- If you have additional questions on contracting out of work claims, please contact your General Chairman.