Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12828
Docket No. 12766
95-2-93-2-121

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
(
(Southern Pacific Transportation Company

STATEMENT OF CLAIM:

"1. That the Southern Pacific Transportation Company, hereinafter referred to as Carrier or Company, has violated the Controlling Agreement dated September 25, 1964, as subsequently amended, Article II, Section 1 & 2 and as amended by Article VI, Section 14(a) and new Section 14(b), when the Carrier subcontracted the repair work on Locomotive EMD 6307. Carrier failed to notify the Organization of its intent to subcontract. Affected Employees: All Machinists, Houston, Texas Diesel Shop.

.. RELIEF REQUESTED:

1. That the above stated affected employees be compensated for all labor costs incurred by the Carrier as a result of their subcontracting the repairs and maintenance on EMD Unit 6307. In addition, that the affected employees be compensated for the 10% penalty as provided for in amended Article VI, Section 14(a) and new Section 14(b)."

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 language of the claim as submitted to the Board in this case contains no reference to the date(s) or to the location at which the disputed work was performed. From an examination of the on-property discussions and correspondence, it is apparent that both parties knew what the claim was about. Inasmuch as no one on the property took any exception to these deficiencies in the claim presentation and progression, the Board will accept the claim as here presented.

From the record, it is apparent that locomotive unit EMD 6307 had been leased by Carrier from Electro-Motive Division of General Motors Corporation. Under the terms of the lease agreement, repair and maintenance operations which were to be performed by Carrier were delineated and separated from other repair functions which would be performed at the direction of the Lessor. In this case, the repairs required to be performed on locomotive unit EMD 6307 were of a nature which were to be performed at the direction of the Lessor. In this case, the Lessor instructed Carrier to send the locomotive unit to a facility chosen by the Lessor for necessary repairs. This formed the basis for the instant claim.

The sole determination to be made by the Board is whether or not Carrier was in violation of the provisions of Article II, Sections 1 and 2 as well as Article VI, Sections 14(a) and 14(b) of the September 25, 1964 Agreement when it complied with the instructions of the Lessor in connection with the repairs made on locomotive unit EMD 6307.

In Award 63 of Special Board of Adjustment No. 570, it was held as follows:

> ". . . leasing or renting equipment is not considered to be 'subcontracting' . . . . therefore repairs of (a) leased automotive vehicle by the lessor, in accordance with the terms of the lease, do not have to be justified under the subcontracting restrictions of Article II of the 1964 Agreement. . . ."

In Award 907 of the same Special Board of Adjustment No. 570, we read the following:

". . . this Board held that a carrier cannot be deemed to have engaged in subcontracting of work within the meaning of the Agreement unless the carrier either owns or has discretion and control over the equipment on which the work is performed."

In this case, Carrier possessed none of the criteria mentioned in Award 907. Carrier did not own the locomotive unit; Carrier had no discretion over the performance of the repair work; Carrier had no control over the repairs which were required.

The same or substantially similar conclusion was reached in Special Board of Adjustment No. 570 Awards 64, 160, 198, 323, 324, 398, 456, 457, 466, 518, 536, 790, 1001 and 1046.

Therefore, inasmuch as there is nothing either implied or expressed in the September 25, 1964 Agreement which precludes a Carrier from leasing equipment; and inasmuch as the Lessor in this case had a right to exercise its option relative to the required repairs of the locomotive unit in question; and inasmuch as the Carrier had no ownership of the unit in question, there was no violation of any of the provisions of the September 25, 1964 Agreement in this instant situation. The claim to the contrary 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.