Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12799
Docket No. 12739
94-2-93-2-110

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
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(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"1. That CSX Transportation, Inc., violated the September 25, 1964 Agreement, particularly Article II, when it subcontracted the disassembly and repair of a Hegenscheidt Wheel Lathe at Hamlet, N.C. during the latter part of 1988 and failed to serve 'Advance Notice' relative thereto.

2. That accordingly, CSX Transportation be ordered to pay Machinist M. Hair, R. L. Greene, R. L. Baldwin and M. L. Stuart an amount equal to the man hours expanded (sic) by the subcontractor to perform the above work with an additional 10% penalty, divided equally."

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 were given due notice of hearing thereon.

The Claimants in this case were employed as Machinists at Hamlet, North Carolina. There is no information in the case record to identify when or where at Hamlet these Claimants were assigned. There are assertions by Carrier, without contradiction by the Organization, that these individuals "were not damaged in any way" by the contracting in question, but there is nothing in the form of evidence from either party to show that the Claimants did or did not suffer any actual loss as a result of the use of outside contractors.

This dispute is actually a two-fold claim in that it concerns two (2) contractors who allegedly performed work which the Organization says accrues to its members. In order to understand the somewhat convoluted situations which formed the basis of this claim, it is necessary to burden the Award with some of the history which preceded the claim.

Prior to September 1986, Carrier maintained a Wheel and Axle Shop at Hamlet, North Carolina. At that shop, there was a wheel lathe which was an essential component of the shop operation. This lathe represented a substantial investment by the Carrier. It was purchased new in 1974 at a cost of $1.5 million. It had an estimated replacement value in 1986 of $4.5 million. During its use at the Wheel and Axle Shop, the lathe was maintained and repaired when needed by the Machinists then employed at the shop. Effective September 12, 1986, by agreement between the parties, the Wheel and Axle Shop at Hamlet was closed and the work and employees were transferred to Louisville, Kentucky. With the closing of the Wheel and Axle Shop, all Machinist positions at that shop were abolished. There remained at Hamlet other Machinist positions in the Maintenance Department which positions were filled from the same seniority district roster as were the Machinists at the Wheel and Axle Shop prior to their abolishment. The wheel lathe sat idle at the closed facility from September 1986 until October 1988, when Carrier decided to overhaul and refurbish the lathe and relocate it to their Raceland, Kentucky, facility. Because of the extent and nature of the required overhaul, modification and reconditioning required on the lathe to return it to the original product liability responsibility and implied warranty terms, Carrier entered into a contract with the manufacturer of the lathe to perform the required work. Coincidental with the complete overhaul work to be performed by the lathe manufacturer, Carrier entered into a second contract with a heavy equipment drayage company to transport the lathe from Hamlet to Raceland.

Carrier gave no advance notice to the Machinists' Organization relative to either of the two contracts here involved.

The Organization subsequently initiated action in accordance with the provisions of ARTICLE II - SUBCONTRACTING of the September 25, 1964 Agreement by requesting that Carrier furnish "reasons and supporting data for the subcontracting of Machinist work." This request for information was followed closely by the presentation of the penalty claim which is the subject of this case. Conferences were held for the discussion of this situation. Carrier eventually furnished copies of all pertinent data and material relevant to the contracts. Carrier denied the penalty claim because, in their opinion, any work performed on this lathe after the closing of the Hamlet Wheel and Axle Shop did not accrue to Machinists. Carrier further contended that Machinists did not have exclusive right to the work in question because no such work had even been performed on Carrier's system and that Carrier did not have managerial expertise or employees with the skills and expertise necessary to perform the work here in dispute.

Following exhaustive discussion on the property, the dispute was timely presented to Special Board of Adjustment No. 570, the disputes resolution tribunal created to handle claims arising under the provisions of Article II of the September 25, 1964 Agreement. Subsequently, by agreement of the parties dated June 1, 1993, cases pending before SBA 570 could, under circumstances set forth in the agreement, be withdrawn therefrom and submitted "to any boards available under Section 3 of the RLA." This case was properly withdrawn from SBA 570 and is now properly before this Board for resolution.

During the handling of this case both on the property and before this Board, the Organization has alleged that the work here involved "is specifically covered by the Machinist Classification of Work Rule 51"; that Carrier has acknowledged that maintenance and repair work on the lathe in question had been performed by Machinists; that Carrier was in violation of the requirements of Article II, Section 2 of the September 25, 1964 Agreement by not giving an advance notice to the Organization; and that the second contract involving the moving company concerned primarily the work of "dismantling the machine and labeling the parts for reassembling at another location." The Organization cited with favor Award 891 of SBA 570 in support of their argument relative to the nature and extent of the work performed by the outside contractor.

The Carrier's position and argument in this case has been five-fold:

1. the equipment in question was not a part of Carrier's operations at Hamlet following the closing of the shop in 1986, and therefore any work performed thereon did not accrue to Machinists;

2. the type of work performed by the contractor is not specified in the Machinists' Classification of Work rule;

3. such extensive, skilled work had never previously been performed on this property, therefore the Organization can not demonstrate that such work had historically been performed by Machinists or was generally recognized as work which accrues to Machinists;

4. Carrier did not have either managerial employees or Machinists with the skills and expertise to perform the complex work which was performed by the manufacturer's employees; and

5. inasmuch as the work in question was not covered by the Classification of Work rule, there was no requirement that Carrier must give an advance notice of subcontracting."

The Board has reviewed all of the material presented by the parties and has studied the applicable provisions of the September 25, 1964 Agreement as well as the precedential citations of the parties. It is the Board's conclusion that "work" on the equipment here in question was, to the extent that it could be performed by them, properly assignable to the Machinist craft. Carrier candidly admitted that the lathe "was maintained and repaired by Machinists assigned to the Maintenance Department at Hamlet, North Carolina." Therefore, as required by ARTICLE II - SUBCONTRACTING of the September 25, 1964 Agreement, such "work" could not be contracted out "except in accordance with the provisions of Sections 1 through 4 of this Article II."

In this case, the Carrier has made a prima facie case that the nature and extent of the work here involved could not be performed by the Carrier because of the absence of both managerial skills and skilled manpower. The case record contains sufficient probative evidence to support the conclusion that the work tasks necessary to be completed required that the work be done by the manufacturer's technicians.

The Board has carefully studied the decision set forth in Award 891 of SBA No. 570. We find no fault with the conclusions reached in that Award. We do, however, find substantial variances in the facts as set forth in Award 891 as compared with the facts in this case. For instance, in this case there is no evidence that in stock materials were used for repairs which were made. In this case, there is convincing evidence to show that the work performed on the lathe was different to a significant degree from day-to-day maintenance. In this case, the work records of the contractor, including a convincing affidavit from the contractor, were, in fact, supplied to the Organization. In this case, verification of the difference in the nature of the work was given to the Organization. In this case, we have no need for dictionary definitions to explain a substantial difference in the work performed by the contractor versus the normal maintenance of the equipment. In short, we do not find Award 891 to be of any assistance in our disposition of this case.

Article II, Section 2 of the September 25, 1964 Agreement clearly requires that, "If the Carrier decides that in light of the criteria specified above it is necessary to subcontract work of a type currently performed by the employees, it shall give the general chairman of the craft or crafts involved notice of intent to contract out and the reasons therefor." Carrier's argument that the work here in question is not "of a type currently performed by the employees" is not convincing to this Board. Machinists had, prior to the closing of the shop, maintained and repaired the lathe. They were the last mechanics who had performed any repair and/or maintenance thereon. The fact that the machine lay idle for some 2 years does not, ipso facto, remove the maintenance and repair of that machine from the Classification of Work rule or from the jurisdiction of the craft which last performed such maintenance and repairs.

This case turns on Carrier's convincing argument and evidence that they did not have available qualified managerial people or skilled, qualified mechanics to do the work in question. These are clear, applicable criteria for the proper use of an outside contractor. The meeting of these exception criteria, however, does not relieve the Carrier of the necessity of giving an advance notice of their intent to use the outside contractor.

As to the second part of this claim, the Board is unable to conclude that the work of loading, transporting and unloading the lathe accrues in any manner to the Machinists' craft. Contrary to the Organization's argument that this contractor's work involved primarily the work of "dismantling the machine and labeling the parts for reassembling at another location," the Board is convinced that the primary responsibility in this instance was the safe loading, transporting and unloading of the refurbished lathe. Such work is clearly not "set forth in the Classification of Work Rules of the craft parties to this Agreement." Neither is it work which had been "historically performed and generally recognized as work of the crafts at the facility involved." Therefore, Carrier had no obligation to give advance notice relative to the contract entered into with the equipment moving company. That portion of this claim is denied in its entirety.

As for the portion of the claim dealing with the actual repair and/or rebuilding work performed on the lathe, the Board is controlled by the provisions of ARTICLE VI - RESOLUTION OF DISPUTES, specifically Section 14 thereof. Paragraph (b) of Section 14 reads as follows:

> "(b) If the Board finds that the Carrier violated the advance notice requirements of Section 2 of Article II, the Board may award an amount notin excess of that produced by multiplying 10% of the man-hours billed by the contractor by the weighted average of the straight-time hourly rates of pay of the employees of the Carrier who would have done the work.
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> The amount awarded in accordance with this paragraph (b) shall be divided equitably among the claimants, or otherwise distributed upon an equitable basis, as determined by the Board."

It is the determination of this Board that the claim as presented must be denied for the reasons set forth supra except for the 10% provision as set forth in Section 14(b) above. The computation of this amount will be applicable only to the man-hours billed by the contractor whose employees performed the actual repair and refurbishing work on the lathe. This amount is to be divided equally between the named Claimants.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 9th day of December 1994.