S.B.A. No. 570
Award No. 98 / 103
Case No. 85

SPECIAL BOARD OF ADJUSTMENT NO. 570

ESTABLISHED UNDER

AGREEMENT OF SEPTEMBER 25, 1964

Chicago, Illinois - ~~June 27, 1968~~ August 30, 1968

PARTIES TO DISPUTE: System Federation No. 41
Railway Employes' Department
AFL - CIO - Machinists
and
Chesapeake and Ohio Railway Company
(Chesapeake District)

STATEMENT OF CLAIM: That the Carrier violated Article II, of the September 25, 1964 Agreement, when it improperly subcontracted out the work of servicing and repairing of Rental Automotive 1960 Model Pickup Truck No. G-929-T to an outside firm identified as Harvey Shreve Ford, Inc., located at St. Albans, West Virginia, on February 11, 1966.

DISCUSSION: The case devolves upon whether the Claimant Motor Car Mechanic had the exclusive contractual right to perform all servicing and repair work on motor vehicles rented or owned by the Carrier. The specific case arises from the fact that on February 11, 1966 the Carrier subcontracted the following service and repair work on one of its rental trucks to an outside contractor. The work included:

1. installing muffler
2. repairing windshield wiper
3. repairing headlights
4. checking left rear wheel for grease leak
5. checking front manifold pipe for leak and renewing exhaust pipe gasket

The overall labor cost involved in this job amounted to $21.70. The Claimant was a regularly assigned Motor Car Mechanic employed by the Carrier at its St. Albans Shop, St. Albans, West Virginia.

ORGANIZATION'S POSITION: The Organization contends that the Carrier has improperly subcontracted the repair work on this truck to an outside contractor. It maintains that this is work to which the Claimant has been regularly assigned; it is work which the Claimant has the skill and ability to perform; and it is work which the Carrier has the equipment enabling the Claimant to perform it. The Organization insists that the subject repair work clearly belongs to the Claimant and his craft. It cites in support of its position a series of Carrier Bulletins dating from July 1, 1960 through August 11, 1966 wherein the Carrier posted the qualifications for the job of Motor Car Mechanic (Machinist) which listed as qualifications the ability to repair automotive equipment.

The Organization states that this is clear proof that the Carrier recognized that the work in issue belonged to the Claimant and members of his craft. When the Carrier hired Machinists, it made it clear that they had to possess the requisite skills to repair and maintain automotive equipment, and for this purpose, the Carrier maintains a highly equipped motor car repair shop at Barboursville, West Virginia -- only 25 miles from St. Albans. The Organization states that it has been the common practice for the Claimant and other employees in like classification to go to Barboursville and use the equipment there when necessary to perform their duties. However, it adds that in the instant case it would not have been necessary to go to Barboursville because the Claimant possessed on the premises all the necessary tools and equipment to perform the work in issue.

The Organization lists job orders dating from May 2, 1954 to November 25, 1960 showing that Machinists had performed similar and identical repair work for many years. The Organization takes sharp issue with the Carrier's concept of "exclusive", namely, that the Claimant and his fellow employees had to perform every single piece of repair work on every motor car. The Organization states that a more realistic view is that work which the Claimant and his fellow workers had performed for many years and are still capable of performing should not be subcontracted, thus eventually resulting in the loss of their jobs. The Organization states that the Carrier is engaged in a play on words by their use of "exclusive." The Organization further notes that the Carrier has not been able to cite where any other craft has performed work on automotive equipment.

The Claimant's contractual rights have been violated because the work which has been subcontracted comes within the classification of work rules of the crafts signatory to the September 1964 Agreement, and the said subcontracting does not come within any of the exceptions set forth in Article II of said Agreement. The Organization also states that the Carrier has violated said Agreement by not furnishing the requisite advance notice to the appropriate General Chairman and not furnishing the supporting reasons and data for engaging in said subcontracting.

The Organization denies that the transaction in question is a minor one under the accepted definition of the term "minor." The definition of that term applies "minor" only to transactions which are of a non-recurring and unforeseeable nature,not resulting in loss of jobs to shop craft employees. That is not this case. The Organization also maintains that the Claimant suffered a wage loss in not being permitted to perform work which he is contractually entitled to perform. It cites Award No. 3 of this Board and Award No. 1 of Special Board of Adjustment No. 597 are directly in point.

The Organization interposes an objection to the Board considering Carrier's Exhibits Nos. G-1 through G-5 because they were not made known to the employees while the matter was being handled on the property.

CARRIER'S POSITION: The Carrier denies that there is any merit to the claim because the work did not come within the scope rule of the Machinists' Classification as set forth in Rule 62 of the Shop Crafts' Agreement. This Agreement was negotiated in 1921 when there were no motor

vehicles in existence or in use on the property. The terms "engine" used in the rule refers to a machine used in yard and engine service, and the terms "motor car" refers to small four wheeled vehicles used on tracks. The earliest record of an automobile being placed in service on this property was in 1930.

The Carrier states that the very number of vehicles in use on this property generally, and the Chesapeake District particularly, preclude or negate the concept that the Claimant members of the Organization had the contractual right to perform the work in issue to the exclusion of others. It cites data which indicates that on September 19, 1964 (prior to the effective date of the National Agreement here involved)it had 488 automotive vehicles in its Maintenance of Way Department in the Chesapeake District. It also had approximately 800 automotive vehicles in service in the Chesapeake District, taking into account those vehicles which were used and assigned to all departments of the Carrier. It states that on the effective date of the National Agreement of September 1964, the Carrier had 30 Motor Mechanics assigned to ten Operating Divisions. The Carrier contends that it was not possible for these 30 Motor Car Mechanics to repair and service the hundreds of automobiles situated at points of a railroad system extending 3200 miles. Many of these automobiles are located at points thousands of miles away from the Carrier's nearest operation. These facts make it self evident that the repair and maintenance of motor cars have not been recognized or "generally recognized" as the exclusive work of the Mechinists' Craft. The Carrier admits that road mechanics have repaired automotive vehicles, but the extent to which they have done this work has varied from location to location. It depended on the work load of repairing roadway equipment -- the primary task or function of motor mechanics, as well as the available skills and equipment. The Carrier states that motor car mechanics repair and will continue to repair motor vehicles.

The Carrier states that the General Chairman admitted in conferences on the property that repair and maintenance work had not been exclusively performed by members of the Machinists' Craft. He stated that the violation was a matter of degree and motor car mechanics were performing less work subsequent to the September 1964 Agreement. It further states that the General Chairman readily acknowledged that repair and maintenance work had been performed by outside firms throughout the years since the commencement of the use of the motor cars on this property. The Carrier adds that a search of its records reveals that only one grievance was filed by the Organization relative to repairing automotive equipment by an outside garage. The grievance was denied and then dropped and not prosecuted by the Organization.

The Carrier also alludes to the so-called Miami Agreement of 1958 purporting to deal with the revision of classification of work rules by members of the Railway Employes' Department. One of the proposed revisions sought by the Group was to include within the Machinists rule work on "automotive equipment." This, says the Carrier, is clear adknowledgment that the 1920 work rules do not presently cover automotive work.

The Carrier also denies that the Claimant suffered any wage loss within the contemplation of Article VI, Section 14. The Carrier adds that even if the work was subcontracting, it would have been permissible under the enumerated criteria of Article II. It also contends that no advance notice was required because the transaction in issue was a minor one.

FINDINGS: The Board must find that the work in issue does not come within the existing Machinists' Classification of Work Rules and consequently the petitioning Organization is not vested with the exclusive contractual right to perform the said work.

The record discloses that Rule 62 was negotiated before the introduction of automotive vehicles on the property. There is evidence in the record that the Organization was aware of this gap and deficiency in its Scope Rule and sought to correct it by the "Miami Agreement." But even more importantly, the very number of motor vehicles in the Carrier's Maintenance of Way Department, when that number is juxtaposed against the number of motor car mechanics employed by the Carrier, it inexorably leads to the conclusion that the repair and maintenance work was not, and could not, be exclusively performed by the members of the petitioning Organization.

The Organization, however, insists that its rights have been violated under the subcontracting provisions of the September 1964 Agreement when the work which its members have performed regularly and continuously for many years is given to others. The Organization in effect is contending that it has vested rights to work which has "accreted" to its contract, and this work may not be taken away and given to outside contractors, to either the actual or potential disadvantage of its members. The difficulty with accepting this argument is that the Board must determine, not whether the Claimant and his fellow employees performed the work, but rather whether they were contractually entitled to perform the work to the exclusion of all others. That Board is charged with the responsibility of interpreting a contract which the parties to this dispute have negotiated. They have voluntarily stated that the limitations against subcontracting are to apply only to the work covered by the work rules of the affected craft. Unless the Board finds that the work subcontracted is encompassed within the schedule agreement's work rules, it has no basis for proceeding further with its consideration of the claim. The fact that the Machinists on this property have performed the work in issue at the behest of the Carrier contemporaneously with other outside sources, does not permit this Board to expand or dilate the existing Scope Rule of the petitioning Organization.

It is for these aforesaid reasons that the Board must find that the Carrier did not violate the relevant provisions of the September 1964 Agreement.

A W A R D

Claim denied.

Adopted at Chicago, Illinois, ~~June 27, 1968~~ August 30, 1968.

Carl V. Ludwig
NEUTRAL MEMBER

W. S. Macgill

M. E. Parks
CARRIER MEMBERS

We dissent

Paul J. Marsell

Richard E. Martin
EMPLOYE MEMBERS