S.B.A. No. 570
Award No. 245
Case No. 307

SPECIAL BOARD OF ADJUSTMENT NO. 570

Established Under

Agreement of September 25, 1964

Chicago, Illinois - August 6, 1971

PARTIES TO DISPUTE: System Federation No. 96
Railway Employes' Department
AFL-CIO - Carmen

and

Lehigh Valley Railroad Company

STATEMENT OF CLAIM: 1. That the Carrier violated Article II, Sections 1 and 2, of the September 25, 1964 Agreement, when it improperly contracted out the work to rebuild 250 box cars and 190 gondolas to the United States Railway Equipment Company, Washington, Indiana.

2. That accordingly, the carrier additionally compensate the Carmen and Carmen Helpers presently working at Sayre, Pa., Car Shop and Packerton, Pa., Car Shop. And compensate all carmen and carmen helpers furloughed at Sayre and Packerton Shops, (names of claimants shown on Appendix "A" and "B" attached hereto) on the basis of the number of hours work at the straight time rate, performed by employees of the above named firm in this instance. The total number of hours compensation to be equally divided among said claimants.

FINDINGS: On June 10, 1969, Carrier entered into leases for the rental of 250 box cars and 190 gondolas from the United States Railway Equipment Company, Des Plaines, Illinois. About three weeks later, i.e., on July 3, 1969, Carrier sold outright to USRE the precise number of box cars and gondolas which it had recently leased from that supplier. These transactions were each complete and binding in andof themselves, without any reference in the one to the other.

On their face, the documents exchanged did not obligate USRE to lease back to the Carrier, after renovation, the identical cars purchased from the Carrier. According to the Carrier, this was simply an arrangement to provide it with the same number of cars which it had formerly owned, but had been forced to sell to raise operating capital.

On the basis of the foregoing transaction, and the fact that Carrier has regularly maintained car shops at Sayre, Pa., and Packerton, Pa., (although allegedly car rebuilding has either been discontinued entirely or not performed for some years at said locations) a claim is brought for subcontracting in violation of Article II of the September 25, 1964 Agreement.

At the time this transaction occurred, Carrier was in dire financial straits, the seriousness of which was shortly proven by the Carrier going into bankruptcy. Cars had been left idle for lack of money to buy repair materials, employment dropped to less than one-half of that of only twelve years before, and many essential activities were curtailed. The Carrier needed the bad order box cars and gondolas that were standing on storage tracks. Yet, it was prevented from repairing same both by the circumstance that funds were not available to purchase the materials needed in such a reconditioning program, and by the fact that due to the indefinite unavailability of such equipment (material), the required time of completion of the work could not be met.

Thus, in the instant situation, the distress is real, not imagined. The Carrier's inability to properly utilize its own equipment (rolling stock) suggests not only the propriety, but the advisability of lease arrangements.

Where, as here, short term capital is unobtainable to finance a desperately needed extensive car repair and reconditioning project, and some or all of the criteria listed in Article II, Section 1 is brought into play, the sale of scrap cars, and simultaneous lease of replacements, does not circumvent the restraints on subcontracting enunciated in the September 25, 1964 Agreement.

By the terms of Article II, Section 2, Carrier is required (before going ahead with plans to subcontract work falling within the scope of the Agreement of September 25, 1964) to give advance notice of intent to contract out. Here Carrier, in the mistaken belief that the arrangements were not in the subcontracting field, did not fill in the Carmen General Chairman with the details of the forthcoming event. However, there was no attempt to hide the documents from him, and he was given several opportunities to review the material and take notes.

Thus, although the approach taken may perhaps be deemed marginal compliance with the Agreement, the Carrier did reveal the relevant documents,

and the Organization did have access to the essential information. Lacking the presence of surprise or secrecy, it cannot be said that Carrier's actions were harmful to the Organization. Indeed, it is hardly to be expected that either party would have abandoned its respective fixed position on this issue had Carrier supplied the Organization with copies of all documents involved.

AWARD Claim denied.

Adopted at Chicago, Illinois, August 6, 1971

Harold M. Gilden - Neutral Member

We Dissent:

Carrier Members

Labor Members