S.B.A. No. 570
Award No. 427 427
Case No. 501

SPECIAL BOARD OF ADJUSTMENT NO. 570

ESTABLISHED UNDER

AGREEMENT OF SEPTEMBER 25, 1964

PARTIES TO DISPUTE: International Association of Machinists and Aerospace Workers

and

The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: 1) That the Carrier violated Article II, Sections 1, 2 and 3 of the September 25, 1964 Mediation Agreement when they contracted out the reboring and sleeving of

210 air compressors cylinders to the Triangle Engine Rebuilders Inc., Chicago, Illinois (also Preheat Welding Company, Rockville, Maryland) when Machinists were furloughed at the Cumberland Bolt and Forge Shop, Cumberland, Maryland.

2) That the Baltimore and Ohio Railroad Company be ordered to compensate furloughed Machinists W. G. Shobert, F. G. Zirk, P. Pabletti, G. W. Viands, J. Largeant, E. J. Hoffman, D. E. Wakefield, R. A. DeLozier, H. W. Copen and J. P. McKenzie, for an amount equal to labor cost paid to said companies, for the reboring and sleeving of said cylinders.

DISCUSSION AND FINDINGS: The question at issue is whether Carrier violated Article II of the September 25, 1964, Agreement, when it contracted out from its Cumberland facilities the work of sleeving air compressor cylinders while ten machinists were on furlough from the Cumberland Bolt and Forge Shop. It is Petitioner's position that the work belongs to machinists and that it is a clear

breach of Article II for Carrier to have it performed by outside firms.

Carrier contends, on the other hand, that the claim cannot be upheld since 1) Petitioner did not handle it in the normal manner on the property and therefore failed to meet the requirements of the Railway Labor Act and September 25, 1964 Agreement, and 2) neither the managerial skills nor essential equipment are available on the property.

Carrier bases its first ground on the fact that the General Chairman proceeded to file the claim with this Board without first giving Carrier the opportunity to respond after the parties' conference of October 22, 1975. It maintains that Carrier advised the General Chairman at that conference that it would investigate the feasibility of machinists performing the sleeving work. According to Carrier, by filing the claim before he heard from Carrier in that regard, the General Chairman acted prematurely and did not afford the parties a full opportunity to explore settlement possibilities.

Carrier's first point is unpersuasive. The claim had been before it over six months at the time the October 22, 1975 meeting was held and thereafter the General Chairman waited an additional seven weeks without any indication from Carrier that it was prepared to suggest a formula for resolving the dispute. While it might have been better practice

for the General Chairman to have notified Carrier before proceeding to the Board, his failure to do so or to continue to wait for Carrier to communicate with him does not warrant dismissal of the claim.

The dispute regarding the merits of the case stems from a change in Carrier's method of reclaiming air compressor cylinders. Formerly, until the summer of 1974, an essential part of the reclaiming process was for machinists at Cumberland to rebore the inside diameter of the worn cylinder to 0.030 inch or 0.060 inch oversize; 0.030 or 0.060 inch pistons then were utilized.

Under that method, according to Carrier, cylinders would have to be scrapped when they became unserviceable after having been bored to 0.060 inch; in addition, Carrier was required to maintain an inventory of three different sizes of pistons and rings (standard, 0.030 inch and 0.060 inch). Because of these problems, Carrier contends, it decided to reclaim cylinders by having a cylinder liner inserted that would return the inside diameter of the cylinder to standard size. Carrier maintains that by using the sleeving method, Carrier would only require an inventory of standard size pistons and rings and could resleeve the cylinder rather than scrap it after it had reached the second oversize level. None of the statements contained in this paragraph are controverted in the record.

It is undisputed that instead of assigning its own machinists to the sleeving operation, Carrier farmed out that work to Preheat Welding Company on September 19, 1974, and to Triangle Engine Rebuild Company on September 27, 1974 and February 13, 1975. These subcontracts were bound to provoke controversy since machinists had formerly performed cylinder reclaimation work and ten machinists had been furloughed.

However, Article II Section 1 permits subcontracts when managerial skills are not available on the property. In its letter of reply of August 22, 1975, to the claim initiated on the property, Carrier unambiguously stated that it was contracting out the work of reclaiming cylinders by the sleeving process, that such work had never before been performed at its Cumberland Shop and that the management at that location is not skilled in handling the process.

Although that August 22 letter squarely raised the issue, no evidence has been presented that management was familiar with the sleeving process or that there was no substantial distinction between handling the former reclamation method or the new process. The subcontracting of machinists' work when machinists are on furlough is a matter of considerable concern but there is no basis for sustaining this claim in the absence of facts that disprove Carrier's presentation.

We cannot validly hold on this record that Carrier is not at liberty to change cylinder reclamation techniques to a process that is more economical and efficient. Nor can we conclude, in the absence of additional details, that Carrier was obligated to experiment with its own managerial forces during the first few months the new process was used rather than to call upon outside firms familiar with the operation to perform the work. If Carrier's own management possessed the necessary skills to handle the process during the September 1974 to March 1975 period or if the differences between the old and new processes are insubstantial, those factors should have been established in the record. Mere statements of conclusions and characterizations are not helpful to this Board in resolving a sharply defined issue.

In the light of this record, we have no alternative but to deny the claim. Since machinists were not "currently performing" sleeving work at the time of the subcontracts, the notice requirements of Article II Section 2 are inapplicable.

In arriving at our decision, we have not given weight to Carrier's contention that essential skills were unavailable; the contention was not made on the property, so far as the record shows.

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A W A R D

Claim denied.

Adopted at Chicago, Illinois, June 6, 1977.

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Petitioner should not be made. The claim is disposed of as set forth in the foregoing award.

Harold M. Weston,
Neutral Member

L. C. Carter

M. J. Cullen dissent

Carrier Members

Labor Members

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Established Under
Agreement of September 25, 1964
Dissenting Opinion of Labor Member
To Award No. 427

The award is in palpable error and requires dissent. In all of the handling on the property it was never disputed that machinists have historically machined bushings (sleeves) and bored holes for same in all types, sizes, and shapes of component parts. In spite of this unrefuted fact the majority states in pertinent part:

> "Since machinists were not 'currently performing' sleeving work at the time of the subcontracts.."

The agreement states "work of a type currently performed" and this most certainly then was "of a type". The agreement doesn't state that the work has to be of the same size, kind, color, name etc. or any other assinine assumptions or self imposed conditions.

The majority further held that the Carrier lacked skilled supervision. This contention is equally as baseless when the facts based that the employes perform the work and have done so historically, as hereinbefore stated. These same majorities have held before the N.R.A.B. that the Carrier has the sole right to pick their supervision and that such supervision doesn't have to come from the crafts and/or class supervised. Now to hold that they lack certain skills or expertize is like rewarding the Carrier for their own shortsightedness and deficient policies.

This criteria on skilled supervision is so baseless that

the Carrier's Conference Committee made an agreement that it would not be used as argument subsequent to March 12, 1975. The majority was aware of this fact and should have considered it even though the instant claim had arisen approximately 15 days prior thereto. This award is therefore now without any precedential impact whatever and was certainly a shallow reason or excuse for a majority to grasp to deny a proper claim. This is especially horrendous in consideration of the fact that machinist craft members were furloughed who could have and should have performed this work.

We vigorously dissent.

G. R. DeHague

George R. DeHague
Labor Member