H. M. Harper

S.B.A. No. 570
Award No. 53
Case 62

Special Board of Adjustment No. 570

Established Under

Agreement of September 25, 1964

Chicago, Illinois - July 20, 1967

PARTIES TO DISPUTE: System Federation No. 25
Railway Employes' Department
AFL-CIO, Machinists
and
Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM:

1. That the Terminal Railroad Association of St. Louis violated Article II of the September 25, 1964 Agreement when it sent Ballast Regulator T.R.R.A. No. 145 off the property for repairs and further violated the Agreement when it failed to give advance notice and the reasons therefor, together with supporting data.

2. That accordingly, the Terminal Railroad Association of St. Louis compensate the Machinists in the amount of eight (8) hours each at the overtime rate for the days appearing next to their names account they were available and should have been called to perform this work.

NAME	DATE	AMT. OF TIME CLAIMED
De Allyon Sloan	May 24, 1965	8 hrs. at overtime rate
William Marquis	May 24, 1965	8 hrs. at overtime rate

FINDINGS: Carrier leased Ballast Regulator T.R.R.A. No. 145 to Missouri Pacific Railroad in 1963 and it was returned to Carrier on April 12, 1965. On May 21, 1965, Carrier sent the equipment in question to Railroad Machinery Service Corporation in Brooklyn, Illinois for repairs.

Under terms of the lease, Missouri Pacific Railroad agreed to be responsible for all repairs and was to return the Regulator in as good condition as when delivered, normal wear excepted. When the equipment was returned to Carrier, it was not in as good condition as when delivered and Missouri Pacific acknowledged responsibility.

Carrier's position is that the repair work performed on the machine was the sole responsibility of the Missouri Pacific Railroad under the terms of the lease between Carrier and said Railroad; that the work did not develop as a result of use of the machine by Carrier's employes. Carrier further asserts that Missouri Pacific Railroad requested Carrier to send the Regulator to Railroad Machinery Corporation to be repaired at said Railroad's expense.

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The Organization's position is that work performed by the outside contractor is work covered by Rule 52 and also work of a type currently performed by Carrier's employes. The Organization further argues that the lease itself did not exclude the work from being performed by Carrier's employes.

We do not agree with Carrier that the lease relieves Carrier from any possible violation of the September 25, 1964 Agreement. The facts show that Carrier had the option of returning the Regulator to the Missouri Pacific Railroad in order for said Railroad to have the necessary repair work performed in accordance with the lease. However, Carrier in this instance, chose to take it upon itself the job of having the repairs completed. When it did this regardless of whether the Missouri Pacific Railroad directed it to send it to a named outside contractor, it undertook the making of the repairs to this equipment and thereby subjected itself to any possible violation of the Agreement with the Organization in regard to Article II, Subcontracting.

Carrier has raised a procedural defect, alleging that claimants were not specifically named within sixty days of the date of the filing of the claim and thus did not conform to the requirements of the Memorandum of Understanding of January 7, 1965 between the parties hereto. In reply to this position, the Organization alleges that it complied with the Memorandum of Understanding of January 7, 1965. Examination of said Memorandum of Understanding reveals that disputes processed to this Board are not subject to the provisions of the standard Time Limit Rule, and further the agreement reads: "If the alleged violation of Article II - Subcontracting, is then submitted to the Shop Craft Special Board of Adjustment, it will be considered that the special procedural provisions of Article VI have been complied with." Therefore, we must reject Carrier's contention in regard to its allegation of said procedural defect.

In regard to the merits of this claim, Carrier bases its defense solely on the contention of non-responsibility due to the lease provisions with the Missouri Pacific Railroad in regard to this equipment. Nowhere in the record does Carrier allege that it did not have on the property the necessary managerial skills, skilled manpower or essential equipment available to do this work. Therefore, we must conclude that the repairs herein involved come within the limitation of the Carrier to subcontract this work as set forth in Article II, Section 1, thereof. Further, Carrier failed to furnish the Organization with advance notice of intent to contract out the work herein and the reasons therefor, together with supporting data, as required by Section 2 of Article II, although Carrier eventually did comply with Section 3 by furnishing sufficient data to the General Chairman.

There was no evidence submitted as to any pecuniary loss to the claimants herein. The Organization however says that based on the experience of the machinist claimants, they estimate that approximately 16 hours of labor were used to make the repairs and thus were entitled to 8 hours each at the overtime rate for the 2 claimants, although claimants did not suffer any wage loss due to the subcontracting of this work.

Section 14 of Article VI clearly limits the power of this Board in regard to a claim for wage loss arising out of an alleged violation of Article II, Subcontracting, namely: ". . . the Board's decision shall not

exceed wages lost and other benefits necessary to make the employee whole." Therefore, there being no wages lost, the claim for compensation in this instance must be denied.

A W A R D

Claim sustained with reference to the violation of Sections 1 and 2 of Article II of the 1964 Agreement, and denied otherwise.

Adopted at Chicago, Illinois, July 20, 1967.

Paul C. Nagan
Neutral Member

W. E. Park
U. S. Tennell
Carrier Members

We concur in the award but dissent from the finding that Sec. 1 and 2 of Art. II was violated.

Paul J. Marnell
Richard E. Martin
Employe Members

We concur in the Award that Carrier violated Sections 1 and 2 of Article II but we dissent on the money claim for the reasons given in Employe Members Special concurring opinion in SBA 570's Award No. 5 and dissenting opinion in Award No. 8.