S.B.A. No. 597
Award No. 3
Case No. 3

Special Board of Adjustment No. 597

Established Under

Agreement of January 27, 1965

Washington, D. C. - October 11, 1968

PARTIES TO DISPUTE: Brotherhood Railway Carmen of America, operating through System Federation No. 21 Railway Employes' Department, AFL-CIO
and
Southern Railway Company

STATEMENT OF ISSUE: That the Carrier violated Article II of the January 27, 1965 Agreement when prior to March 31, 1967, it improperly subcontracted out the work of building, maintaining and repairing freight cars at Hayne Shop, Spartanburg, South Carolina, to: Custom Services, Inc., Jacksonville, Fla.; Frieze Enterprises, Inc., Charlotte, N. C.; Transco, Inc., Macon Ga.; Southern Iron & Equipment Co., Atlanta, Ga.; Golian Steel & Iron Co., East Point, Ga.; and J. J. Finnigan Co., Duluth, Ga.

FINDINGS: The following facts are deemed to be relevant and material in this case:

1. On March 26, 1967, the Carrier caused to be posted a bulletin giving notice that as of the close of work on March 31, 1967, the work force at its Hayne, S. C., Car Repair Shop would be reduced by the elimination of 83 jobs; i.e., 74 carmen, 3 carmen helpers, 4 painters and 2 sheet metal workers. The next day another bulletin listing the names of the men affected was issued.

2. The Claimants are those carmen, carmen helpers and painters who, prior to being furloughed on March 31, 1967, had been regularly assigned to passenger and freight car building, repair, maintenance, inspection and related duties at Hayne Shop.

3. During the period 1965-1967 the Carrier contracted the work here involved to those companies named in the Statement of Issue. Such work was not completed until after March 31, 1967.

4. Under date of June 29, 1967, the employes filed claims with the Carrier seeking the protective benefits of the January 27, 1965 Agreement under Article I and, in addition, alleging a violation of Article II of that Agreement.

5. Carrier answered by denying the applicability of Article I, Sec. 2(b) of the aforesaid Agreement and asserting that the subcontracting of the work involved was proper as coming within the permissive criteria set out in Section 1 of Article II.

6. Subsequent negotiations, including a conference held on November 27, 1967, failed to resolve the dispute, and it was thereafter submitted to this Board.

Article II of the January 27, 1965 Agreement is entitled "Subcontracting" and reads, in pertinent part, as follows:

> "The work set forth in the classification of work rules of the crafts parties to this agreement will not be contracted except in accordance with the provisions of Sections 1 through 4 of this Article II.
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> Section 1 - Applicable Criteria -
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> Subcontracting of work, including unit exchange, will be done only when (1) managerial skills are not available on the property; or (2) skilled manpower is not available on the property from active or furloughed employes; or (3) essential equipment is not available on the property; or (4) the required time of completion of the work cannot be met with the skills, personnel or equipment available on the property; or (5) such work cannot be performed by the carrier except at a significantly greater cost, provided the cost advantage enjoyed by the subcontractor is not based on a standard of wages below that of the prevailing wages paid in the area for the type of work being performed. Unit exchange as used herein means the trading in of old or worn equipment or component parts, receiving in exchange new, upgraded or rebuilt parts, but does not include the purchase of new equipment or component parts.
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> Section 2 - Advance Notice - Submission of Data - Conference -
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> If the carrier decides that in the light of the criteria specified above it is necessary to subcontract work of a type currently performed by the employes, it shall give the general chairman of the craft or

"crafts involved notice of intent to contract out and the reasons therefor, together with supporting data. Advance notice shall not be required concerning minor transactions. The General Chairman or his designated representative will notify the carrier within ten days from the postmarked date of the notice of any desire to discuss the proposed action. Upon receipt of such notice the carrier shall give such representative of the organization at least ten days advance notice of a conference to discuss the proposed action. If the parties are unable to reach an agreement at such conference the carrier may, notwithstanding, proceed to subcontract the work, and the organization may process the dispute to a conclusion as hereinafter provided.

Section 3 - Request for Information When No Advance Notice Given -

If the General Chairman of a craft requests the reasons and supporting data for the subcontracting of work for which no notice of intent has been given, in order to determine whether the contract is consistent with the criteria set forth above, such information shall be furnished him promptly. If a conference is requested by the General Chairman or his designated representative, it shall be arranged at a mutually acceptable time and place. Any dispute as to whether the contract is consistent with the criteria set forth in Section 1 may be processed to a conclusion as hereinafter provided."

The classification of work rule of the carmen craft is Rule 149 of the March 1, 1926 basic Agreement between these parties. It reads, in pertinent part, as follows:

"149. Classification of Work: carmen's work shall consist of building, maintaining, dismantling, painting, upholstering and inspecting all passenger and freight cars, both wood and steel, . . . , and all other work generally recognized as carmen's work."

The record shows that the work here involved was contracted to the named companies over the period June 1965 to March 1967, and that it was not completed until after March 31, 1967, the date Claimants were furloughed.

Thus the provisions of Article II of the January 27, 1965 Agreement were effective and controlling when the contracting out occurred. Article II proscribes the contracting out of work set forth in the craft classification of work rules (Rule 149 in this case), except in accordance with the criteria of Section 1 and the notice requirements of Sections 2 and 3 thereof.

The record conclusively establishes that the work performed by the independent contractors in this case was of the type prescribed by Rule 149 of the basic Agreement as belonging to carmen. Accordingly, the subcontracting of such work was a violation of Article II of the January 27, 1965 Agreement unless it is shown that it was done in accordance with the provisions of Sections 1, 2 and 3 of that Article.

Carrier contends that the work was subcontracted because managerial skills were not available on the property, skilled manpower was not available on the property from active or furloughed employes, the required time of completion of the work could not be met with the skills, personnel or equipment available on the property, nor could the work have been performed by Carrier except at a significantly greater cost to the Carrier than that charged by the subcontractor. Thus, it asserts, the subcontracting was done in accordance with the applicable criteria of Section 1.

This record is devoid of any evidence presented by the Carrier in support of the foregoing contention that one or more of the criteria of Section 1 applied in the circumstances present here. Bare assertions unsupported by credible evidence cannot be accepted as proof. And the Carrier has the burden of proof in establishing the applicability of the aforesaid criteria. Its failure here to carry that burden compels the finding that the subcontracting of the work involved was a violation of Article II of the January 27, 1965 Agreement.

The Carrier's contention that the claim presented to the Board is not the claim presented by the General Chairman and handled in the usual manner is without merit. The record shows that on July 14, 1967, the General Chairman consolidated two claims then under consideration on the property: one alleging a violation of Article II of the January 27, 1965 Agreement; the other alleging violation of Article I thereof. These consolidated claims were thereafter discussed and handled by the parties in the usual manner on the property and, finally, submitted to this Board. We, therefore, have jurisdiction of the claim, as presented.

In view of the foregoing, the Board will sustain the claim that Article II of the January 27, 1965 Agreement was violated. Claimants are entitled to be made whole for wage losses sustained by them during the period July 3, 1967 (date claim was presented) to August 14, 1967 (date of recall), less allowance for vacation time, in accordance with the provisions of Section 14 of Article VI of the aforesaid Agreement.

Award

Claim sustained to extent set forth in Findings.

William H. Coburn
Neutral Member

M. H. Stevens Jr.
J. L. Ferrell
Carrier Members

James E. Yoest
Paul J. Marnell
Employe Members