

SPECIAL BOARD OF ADJUSTMENT NO. 957

SOUTHEASTERN PENNSYLVANIA :
TRANSPORTATION AUTHORITY :
"AUTHORITY" :
:
AND :
: AWARD NO. 19
BROTHERHOOD OF MAINTENANCE :
OF WAY EMPLOYES :
"ORGANIZATION" :
:

STATEMENT OF CLAIM

Claim of the Brotherhood (BMWE-85-4-F12) that:

The Authority violated Section 101 (b) and (c) of the current Collective Bargaining Agreement and continues to be in violation, when it allowed an employee not represented or entitled by the Agreement to perform work contractually owned by Claimant R. Maher.

REMEDY:

Authority will cease and desist its misapplication of the work assignment provisions of the Agreement, allowing only those employees entitled to perform such work to be so assigned, and that compensation, equal to the number of hours worked by this employee not entitled to said work, be paid Claimant Maher.

OPINION OF THE BOARD

Claimant, R. Maher, claims that he was improperly denied an opportunity to perform bargaining unit work when it was performed by a non-bargaining unit employee. The Organization seeks pay for the Claimant for time not worked.

The basic facts are not in dispute. On Wednesday, January 30, 1985, Claimant was employed as an equipment repair person

first class. During the course of his duties on January 30 he was assigned to repair work on a disabled fork lift at Broad and Lehigh Streets in Philadelphia. Thereafter, because of ongoing operational requirements, Claimant was reassigned to other duties. In the interim the use of the fork lift was still required; consequently, an automotive equipment maintainer employee, who was not represented by the Organization but rather was part of the Authority's city division, was given the fork lift assignment.

The Organization maintains that the Authority's actions were arbitrary and capricious and in violation of the labor Agreement. According to the Organization, once the equipment is assigned to a particular department in a particular division of Authority, it is then the work of that particular division and is included in the job description and is the responsibility of that division, coming within the scope of the applicable Agreement. The Organization further argues that as the work in dispute was performed by a city employee, this must be considered the same as a subcontracting case and circumstances did not exist that required subcontracting under the provisions of Section 1004 of the Labor Agreement. Moreover, in the view of the Organization, work of the fork lift performed by the city employee cannot be considered incident to or directly related to the primary duties of an employee covered by the city transit contract, and therefore the work cannot be assigned pursuant to Section 101 of the Agreement.

The Authority maintains that it properly assigned the work in question pursuant to its "Management Functions", contained in Section 1003, and its right to assign work, contained in Section 101(c), of the Agreement. The Authority believes that the language of Section 101(c) is clear and unambiguous as it pertains to this case, as the work in question did not involve a "preponderance" of the duties of the employee who performed the work. Rather, according to the Authority, the automotive equipment maintainer was given the assignment on the fork lift in conjunction with the duties he ordinarily was responsible for each day and simply performed this task as part of his assignment for the date in question. The Authority also notes that Section 1005 (Productivity) of the Contract mandates that both the Organization and Authority work together to insure the operation is run safely, efficiently and economically. Lastly, the Authority asserts that the Claimant has here abandoned his grievance, as he has returned to Conrail.

Cited provisions of the parties contract state in part:

Article I - Section 101 - Union Recognition

(a) The Southeastern Pennsylvania Transportation Authority recognizes the Union as the exclusive collective bargaining representative for those employees on the Regional High Speed Lines who spend the predominant amount of their time performing job duties described in the following Job Classifications: Numbers 1202, 1222, 1241, 1253, 1262, 1263, 1274, 1101, 1111, 1121, 1122, 1132, 1161, and 1174.

(b) Work within the job classifications specified above and such job classifications may be combined, reclassified, eliminated or abolished by SEPTA, provided that such work and/or classifications shall not be transferred to the application of the Rules of another SEPTA Collective Bargaining Agreement or non-

agreement employee, except as provided in subparagraph (c) below.

(c) Work covered by this Union Recognition clause which is now or hereafter incident to and directly attached to the primary duties of an employee not covered by this Agreement may be performed by such other employee, provided the performance of such work does not involve the preponderance of the duties of such other employee.

Article 10 - Section 1003 - Management Functions

All management functions and responsibilities which SEPTA has not expressly modified or restricted by a specific provision of this Agreement are retained and vested exclusively in SEPTA, including, but not limited to, the right to ...direct the work force...to determine the number of employees and the duties to be performed...to determine staffing patterns in areas worked...to determine the assignment of work, the qualifications required, and the size and composition of the work force.

The Board has determined that the claim must be denied.

In Award No. 18, also issued this day, the Board has determined that the Authority's right to assign work normally performed by bargaining unit members to those outside the bargaining unit is restricted by Section 101 of the Agreement and is not absolute. The Board further determined, however, that the Authority could make assignments of work outside the bargaining unit if it met the three conditions of Section 101(c), namely (1) the work is "incident to"; and (2) "directly attached to the primary duties" of another employee; (3) "provided the performance of such work does not involve the preponderance of the duties of such other employee".


The Board here determines that the three requirements of Section 101(c) were met when the automotive equipment maintainer worked on the fork lift on January 30, 1985. The fork lift work

was incident to, and directly attached to, the primary duties of the automotive equipment maintainer, and did not involve the preponderance of duties of the maintainer. The maintainer was simply given the assignment as part of his normal duties due to particular events on the day in question.

Finally, the Board concludes that under the circumstances here present, the subcontracting provision of the Agreement is not applicable. Accordingly, the claim must be denied.

AWARD

Claim denied.


 R. B. BIRNBRAUER
 Authority Member

 *(Dissent)
 W. E. LaRUE
 Organization Member


 S. E. BUCHHEIT
 Neutral Member

*The Organization must dissent to this Award No. 19. In its decision, the Board majority has erred when failing to address the overtime issue involved. Claimant Maher had started his work on the forklift during regular assigned hours, and after the Claimant was relieved from his duty, this same work was assigned and completed by the City Transit Division on an overtime basis. Consequently, the Claimant was denied overtime that was rightfully his by agreement. The Board majority has overlooked this important aspect of the claim, and therefore, the Organization Member must dissent to the decision rendered.