

SPECIAL BOARD OF ADJUSTMENT NO. 570

ESTABLISHED UNDER

AGREEMENT OF SEPTEMBER 25, 1964

Chicago, Illinois, December 18, 1969

PARTIES
TO
DISPUTE:

System Federation No. 2
Railway Employees' Department
AFI-CIO (Electrical Workers)

and

Missouri Pacific Railroad Company

STATEMENT
OF
CLAIM:

1. That the Missouri Pacific Railroad Company violated Article II of the September 25, 1964 Agreement when it subcontracted to Western Union Telegraph Company, the installation and maintenance of fifteen (15) teletype machines at North Little Rock, Arkansas.
2. That further, the Missouri Pacific Railroad Company violated Section 2, Article II of said Agreement by failing to give advance notice of intent to contract out and the reasons therefor, together with supporting data, of the above described work.
3. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate the Telephone Maintainers at Little Rock, Arkansas at the overtime rate of pay for the same number of hours the Western Union Telegraph Company employees performed such work.

DISCUSSION
AND
FINDINGS:

On or about July 15, 1968 Western Union Telegraph Company employees installed fifteen (15) teletype machines in Carrier's office at Little Rock, Arkansas. The machines are owned by Western Union and they were installed on a lease basis. The lease arrangement included installation.

Employees contend that such installation is subcontracting under Article II of the Mediation Agreement of September 25, 1964. Carrier argues that it is not subcontracting but is rather a technological and operational change permitted in Article I of that Agreement. Since no employees were displaced as a result of such installation and none were deprived of employment, Section 2 of Article I of that Agreement is not applicable.

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Protective benefits under Section 2 of Article I apply to "employees who are deprived of employment or placed in a worse position with respect to compensation and rules governing working conditions as a result of", among other things, the:

"d. Lease or purchase of equipment or component parts thereof, the installation, operation, servicing or repairing of which is to be performed by the lessor or seller;"

Leasing of equipment is not subcontracting. The two terms are not synonymous and the two conditions are separate and distinct business ventures. In a leasing situation the lessee--the Carrier here--has no title to the equipment or apparatus installed while work is performed by one party on equipment or apparatus owned by another party. In Award No. 63 this Board held that:

"In order for the Carrier to be able to engage in 'subcontracting' it must first legally own, or have dominion over, the subject matter of the 'res' of the subcontract. The carrier cannot legally subcontract a vehicle to which it has no title."

From the undisputed facts in the record, it is the finding of this Board that this carrier does not legally own or does it have dominion over the fifteen (15) teletype machines and thus could not subcontract the installation work. They were installed under a leasing arrangement permissible under Article I and not under Article II of the Agreement. Since no employee was displaced or adversely affected as provided in said Article I, no violation of the Agreement exists.

AWARD

Claim denied.

Adopted at Chicago, Illinois, December 18, 1969

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David Dolnick
Neutral Member

W. L. Harris
Carrier Member

Richard E. Martin
Employee Member

Wm. P.raidwood
Carrier Member

Paul J. Russell
Employee Member