S.B.A. No. 570
Case No. 61
Award No. 42

SHOP CRAFTS SPECIAL BOARD OF ADJUSTMENT NO. 570

ESTABLISHED UNDER

AGREEMENT OF SEPTEMBER 25, 1964

Chicago, Illinois - July 10, 1967

PARTIES TO DISPUTE: System Federation No. 114
Railway Employes' Department
AFL-CIO -- Machinists
and
Southern Pacific Company (Pacific Lines)

STATEMENT OF CLAIM: That the Carrier violated Article II, of the September 25, 1964 Agreement, when it improperly subcontracted out the work of servicing and repairing of Rental Automotive Unit #1927 Scout I.H., to an outside firm identified as International Harvester Company, Oakland, California, during the period March 10-14, 1966.

FINDINGS: This is not a case of first impression between these same parties. In Award No. 3 involving the servicing of a 1963 Chevrolet passenger car leased by this carrier from the Interstate Vehicle Management, Inc. (formerly the General Lease Corporation) this Board directed this carrier to compensate the claimant therein "at the proper straight time hourly rate for the actual number of hours taken by Cochran & Celli to perform the work in question."

Here too, as was the fact in Award No. 3, no notice of intent to contract out was given by the carrier to the Machinist's General Chairman. Noticeably, the arguments advanced by the carrier as grounds for the disallowance of this claim have already been considered and rejected by this Board in its Award No. 3. It is readily apparent therefore that in all essential particulars the instant case is on all fours with the factual situation encountered in Award No. 3.

In the interest of consistency, if for no other reason, and entirely apart from any intention to take away or repudiate what we said in Award No. 8 concerning the application of Article 6, Section 14 of the September 25, 1964 Agreement, the said prior adjudication should be deemed to have sufficient force and effect to finally put to rest the particular issue on this property.

AWARD: That carrier forthwith shall remunerate motor car mechanic, M. Hayes employed at carrier's West Oakland Automotive and Work Equipment Shop, at his appropriate straight time hourly rate for the actual number of hours taken by International Harvester Company, Oakland, California, to perform the work in question.

Adopted at Chicago, Illinois, July 10 , 1967.

Harold M. Gilden

James E. York

Richard E. Martin

Employee Members

Carrier Members

SPECIAL BOARD OF ADJUSTMENT NO. 570

DISSENT OF CARRIER MEMBERS TO AWARD NO. 42

This award is no better than the foundation upon which it is built. After referring to Award No. 3 of this Board, the Findings here state:

> "In the interest of consistency, if for no other reason, and entirely apart from any intention to take away or repudiate what we said in Award No. 8 concerning the application of Article 6, Section 14 of the September 25, 1964 Agreement, the said prior adjudication should be deemed to have sufficient force and effect to finally put to rest the particular issue on this property."

It appears to the Carrier representatives that the decision in this case was rendered primarily, if not solely, on the basis of maintaining uniformity of decisions, even though the decision this referee follows is one of the most palpably erroneous decisions ever rendered by any tribunal in the railroad or any other industry.

During the discussion of this award prior to its adoption, the referee stated he wanted to make it clear that in reaching his decision he did not go into the two basic issues in this case, namely (1) Did the Carrier sub-contract, and (2) Are employees under the circumstances entitled to monetary benefits. The answer to issue No. 1 is the Carrier did not sub-contract out the work because it had never contracted the work in and thus could not have violated Article II of the Agreement, and to issue No. 2 is that the employees under the circumstances were not entitled to any monetary benefits since there has been no showing that any employees have been adversely affected within the meaning and intent of the Agreement. The referee obviously did not take into account the detailed dissent filed by the Carrier Members with Award No. 3 in which it was concluded that the holding "cannot and will not be accepted as a precedent or having evidential or legal significance in any other dispute or disputes." In addition, it was clearly pointed out to the referee that the case covered by Award No. 3 was a case that should have been decided under the provisions of Article I of the September 25, 1964 Agreement - more specifically, that provision in Article I, Section 2(d) which reads as follows:

> "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;"

What the company did in the case involved in Award No. 3, as well as in this case, was to lease from an automotive leasing company certain automobiles and/or small trucks the "servicing or repairing of which is to be performed by the lessor or seller." This is absolutely permissible under Article I, Section 2(d). The further requirement of Article I is simply that if such leasing in of equipment on which the servicing and repairing is done by the lessor displaces or deprives employees of employment, such adversely affected employees become subject to the protective benefits of the Washington Job Protection Agreement. Thus, the record is clear that:

1. The Carrier had the right to do what it did.

2. No employees were displaced, deprived of employment or placed in a worse position with respect to compensation and rules governing working conditions.

3. Had any employe been affected as described in 2 above, the sole remedy would have been the benefits of the Washington Job Protection Agreement.

In addition to ignoring the provisions of Article I of the Agreement and misapplying the provisions of Article II, this referee in sustaining the claim for money further ignored the provisions of Article VI, Section 14, which limits recovery of monetary benefits in claims based on violation of Article II to an amount not to exceed wages lost and other benefits necessary to make the employee whole. In this case, the referee said this did not mean he agreed with Award No. 3, in fact, so far as the interpretation and application of Article VI, Section 14, was concerned, he still stood squarely on Award No. 8 as shown by his Award No. 44 (adopted the same date as this Award No. 42) in which he said:

> "Under the language of Article VI, Section 14 of said Agreement, the circumstances that the named claimants employed at the Havelock Shop, Lincoln, Nebraska worked full-time and did not suffer any wage loss during the period the work was performed by the sub-contractor, stands to prevent the direction of a monetary recovery."

The cavalier acceptance of the erroneous Findings in Award No. 3 by the referee for no other reason than "in the interest of consistency" is thus a mockery. In Award No. 8, this same referee refused to follow the holding in Award No. 3 on the matter of monetary recovery. Now in this Award No. 42, he does the inconsistent while claiming to be consistent by holding the September 25, 1964 Agreement to mean something different on the Southern Pacific in auto leasing cases, and on the same day in Award No. 44 follows his Award No. 8 as the sound and proper interpretation and properly ignores as unsound the holding in Award No. 3.

Obviously, under these circumstances, the referee had a duty and obligation to re-examine the entire record at issue in this case in the light of the detailed dissent filed by the Carrier Members with Award No. 3, and the further argument presented by the Carrier Members in advance of the adoption of this award relative to the clear provisions of Article I, Section 2(d). Inasmuch as Article I, Section 2(d), of the September 25, 1964 Agreement clearly provides that the Carrier has the right to do what it did and with the further knowledge that no employees were adversely affected within the meaning and intent of Article I, it follows that this claim should have been denied.

For the foregoing reasons, we dissent and cannot accept this award as a sound precedent or as having any significance in any other dispute.

M. E. Parks
Carrier Member

W. B. Macgill
Carrier Member