

Special Board of Adjustment No. 570

Established Under

Agreement of September 25, 1964

Chicago, Illinois -

PARTIES

TO
DISPUTE:

System Federation No. 95
Railway Employees' Department
A.F.L. - C.I.O. - Electricians
and
Chicago, Burlington & Quincy Railroad Company

STATEMENT
OF CLAIM:

1. That the Carrier violated the provisions of Article II of the Mediation Agreement of September 25, 1964, when it improperly subcontracted to Interstate United Corporation the servicing of vending machines in dining cars of the Nebraska Zephyrs, train Nos. 11 and 12.
2. That accordingly the Carrier be ordered to compensate the following electricians on the basis of the number of hours of work of the Electricians' craft, performed by the Interstate United Corporation on vending machines during the month of May and June, 1966.

R. A. Kalis - Electrician employed at Chicago, Illinois.
D. S. Hill - Electrician employed at Aurora, Illinois.
M. Himburger - Electrician employed at Omaha, Nebraska.
Lyle Parrish - Electrician employed at Galesburg, Illinois.
L. J. Timpsett - Electrician employed at Lincoln, Nebraska.

FINDINGS:

The first issue is Carrier's contention that "the claim was not filed in accordance with the time limit agreed upon by the parties," and particularly the sixty-day time limit under rule 30(a) for the claim of violation, and the further sixty-day time limit thereafter for the wage claim under the following provision of the Memorandum of Understanding of January 7, 1965, namely:

"However, if there should be any claims filed for wage loss on behalf of a named claimant arising out of an alleged violation of Article II - subcontracting (see Section 14 of Article VI), such claims for wage loss should be filed promptly and within 60 days of the filing of the alleged violation of Article II - sub-contracting, with the same Carrier Officer as to whom such violation of Article II was directed by the General Chairman of the craft of crafts involved, or his representative."
(Emphasis added).

The alleged violations occurred on February 28, 1966. On May 9, 1966, the General Chairman wrote the Staff Officer saying: "* * * I believe it comes under the provisions of the Agreement of September 25, 1964". The wage claim was sent to the Staff Officer on July 18, 1966, and was received by him on July 20.

Assuming that the General Chairman's letter of May 9, 1966, constituted a claim of violation, it is apparent that it was not within sixty days after February 28, 1966; it is also apparent that the wage claim sent on July 18, 1966, and delivered on July 20, was not within sixty days after the claim of violation. However, the record indicates that all of the parties' discussion upon the property was on the merits, and that these jurisdictional points were not raised. They were therefore waived and now come too late. The record does not show when the dispute was brought to this Board by notice, or when the parties' submissions were filed, and no question is raised whether those actions were in time. We shall therefore proceed to examine the claim on its merits.

After the making of necessary changes in each dining car, including the installation by electricians in Carrier's Car Shops at Aurora of two transformers, an air compressor and additional wiring and circuits, the vending machines were installed on lease from the Interstate United Corporation, which services them in all respects, including the supplying of food, the collection of money and their maintenance in operation. They are mechanical, but the power and heat is supplied by electricity. The Carrier has no authority over nor control of their operation, as is true of the other vending machines installed on its property. Any vending machine which the servicemen are unable to keep in operation is removed for repairs by the Interstate United Corporation, which installs another in its place. The Carrier's electricians service the additional equipment and wiring installed for their operation, as in the case of other electrical equipment and wiring on the cars.

The Employes state in their submission:

"These machines replaced the following electrical equipment in each diner:

- "1. The electric dishwasher switch and associated wiring.
- "2. The electric coffee urns and associated wiring.
- "3. The electric toasters and associated wiring.
- "4. The electric exhaust fans, switches, and associated wiring.
- "5. The electric lights, switches and associated wiring in reefers.

"All of the replaced equipment was formerly serviced and maintained by carrier electricians. The vending machines that replaced the mentioned electrical equipment are being serviced and maintained by employes of an outside firm, namely Interstate United Corporation. The carrier has alleged that since the machines require food stocking and coin collecting, it is

necessary for the vending machine company to also service the machines. The organization has insisted that the electrical work of servicing and maintaining the vending machines rightfully belongs to Carrier electricians but has not claimed the food stocking or coin collecting work.

* * * * *

"The electrical craft, as part of the recognized electrical work, maintain and service the air conditioning, coolers and refrigeration of the Carrier's fleet of passenger and dining cars and have satisfactorily performed this work for many years. Also have maintained, serviced, and repaired equipment that utilized electricity to heat water, such as the coffee urns that were removed from the diners on the Nebraska Zephyrs and are completely competent and capable of maintaining and repairing the electrical equipment contained in the vending machines."

The equipment mentioned in their submission as replaced by the vending machines has not been removed from the cars, but is not being used.

Article II of the Mediation Agreement of September 25, 1964 provides:

"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."

Rules 7 and 70 (a) of the current Agreement provide as follows:

"Rule 7. The maintenance of electrical and power lines in and around the shops and buildings, the maintenance of motors and other electrical equipment, all electrical work on manufactured or repaired material."

* * * *

"Rule 70 (a). Electricians' work shall consist of maintaining, repairing, rebuilding, inspecting and installing the electric wiring of all generators, switchboards, meters, motors and controls, rheostats and controls, motor generators, electric headlights, and headlight generators, electric welding machines, storage batteries, axle lighting equipment, and electric lighting fixtures; winding armatures, fields, magnet coils, rotors, transformers and starting compensators; inside and outside wiring at shops, buildings, yards and on structures, and all conduits work in connection therewith, including steam and electric locomotives, passenger trains, motor cars, electric tractors and trucks. Operators of electric cranes of 40-ton capacity and over and all other work generally recognized as electricians' work."

As these rules do not mention the servicing of vending machines, the question presented is whether such work is generally recognized as electricians' work. As noted above, it includes the supplying of food, the handling of money and such maintenance and repairs to keep them in operation as the servicemen are able to perform. This apparently involves some attention to motors and heating elements contained in the vending machines. The question is whether this work on equipment belonging to another company, and maintained by it and not by the Carrier, is generally recognized as electricians' work under the Agreement.

The Employes' submission sets forth as exhibits the following letters:

Exhibit E, a letter from Carrier's Staff Officer, E. J. Conlin, to the General Chairman, dated July 12, 1966, in which he wrote:

"You mentioned some electrical appliances that had formerly been in this car, such as an electric dishwasher, toaster etc. and advanced a contention that the vending machines had replaced these appliances. Since the vending machines have been installed, the dishes have been eliminated and that function is not performed on the cars at all. The same thing is true of the other appliances you mentioned.

"I also advised you that the additional wiring that was installed in these cars by CB&Q electricians at the Aurora Shops, and the maintenance on this additional wiring necessary for a vending machine operation, would more than offset the infrequent repairs made to these electrical appliances. The craft you represent have gained considerable work due to the conversion of these cars to a vending machine operation.

"You asked that the Carrier turn over to CB&Q electricians the maintenance of the vending machines themselves. I advised you this could not be done, since we do not own these vending machines. They are the property of the vending machine company, Interstate United Corporation, and that company maintains them. This is the same as all of the vending machines on this property, including those in shop craft facilities. We have never attempted to maintain vending machines with our own employes, nor do other corporations. One of the reasons why vending machine companies do this themselves is that the stocking of the machines, the collection of coins and maintaining the machine is all done by the same person. CB&Q electricians could not stock the machines or collect the coins."

Exhibit G, a letter from the Federation's Secretary-Treasurer to Mr. Conlin, dated November 5, 1966, in which he wrote:

"Please refer to previous correspondence regarding the installation of vending machines on the property.

"When this Company was given the contract it was with the assurance that they would efficiently maintain and supply them. This is what you passed along to us, but it certainly is not working out that way.

"There has been no place on the property where we have not received complaints. The last place handled in writing was at Galesburg and we have received vigorous protests again from both the roundhouse and repair tracks. They state that they have delapidated old machines which are inoperative over half the time and not ever properly maintained or supplied.

"We are now also receiving many complaints from the Clyde diesel shop as follows: 'They are either broke down half the time, will not return the proper change or short change you on a cup of coffee or soda.'

"We have had similar complaints from West Burlington and Aurora shops recently.

"This Federation would appreciate your investigation and action to determine if this Vending Company is really sincere in wanting these concessions and if not we request that some other company or companies be considered. Please advise." (Emphasis added)

Exhibit H, a letter dated November 8, 1966, in which Mr. Conlin replied:

"I will have these complaints investigated with the Interstate United Corporation and advise you as soon as possible."

Exhibit I, a letter dated December 7, 1966, in which Mr. Conlin reported further:

"Under date of November 29, 1966 Interstate United advised us that all of the conditions set forth in your letter of November 5th had been investigated and corrected. At Galesburg, some of the equipment was replaced; at West Burlington, Aurora and Clyde, increased supervision has resulted in improved service.

"I am sure that Interstate United is doing its best to service and maintain these vending machines in a satisfactory manner. I sincerely hope that you will find a correction has been made at these points listed, and if any more complaints are received, please send them to me promptly."

This correspondence shows that the maintenance of leased vending machines on the property is not generally recognized, or even claimed by the

organization, as electricians' work, and the fact that the vending machines in question may supersede equipment formerly serviced by them does not bring them within the classification of work rules.

A W A R D

Claim denied.

Adopted at Chicago, Illinois - Oct. 24, 1967

Howard A. Johnson
Neutral Member

W. E. Park
J. P. ...
Carrier Members

Wm. Dissent
Paul Marshall
Richard E. Martin
Employee Members