SBA NO. 570
Award No. 727
Case No. 883

SPECIAL BOARD OF ADJUSTMENT NO. 570

PARTIES TO DISPUTE: Sheet Metal Workers' International Association

and

Chesapeake and Ohio Railway Company.

STATEMENT OF CLAIM: It is the claim of the Organization that:

1. The Chesapeake and Ohio Railway Company violated the controlling agreement of September 25, 1964, as amended by the agreement of December 4, 1978 when:

(a) The Carrier improperly contracted out the work of construction of buildings, office and shop and running and testing air lines, installing new shelving for store room at the new Car Yard at Newport News, Virginia on December 21, 1982 (actual construction began on March 16, 1983) and was completed on April 6, 1984, which was in violation of Article 2 of the agreement.

(b) The Carrier did not give the employes any advance notice in violation of Article 2, Section 2 of the agreement.

(c) That, accordingly, the Claimants be compensated in an amount equal to the ten percent (10% as provided for by the agreement for Carrier's violation of the advance notice requirements of Section 2, Article 2 of the agreement).

(d) That, accordingly, the Chesapeake and Ohio Railway Company be ordered to compensate the following Sheet Metal Workers the rate of pay at the time of the violation for the same amount of hours as the price paid to the Tidewater Construction Company, Norfolk, Virginia for this work.

D. L. Criswell
E. White, Jr.
J. R. Kiser
E. F. Craddock

OPINION OF BOARD: This dispute arises from the Carrier's decision to contract out the construction of new office and shop buildings at the Carrier's facilities in Newport News, Virginia. The Carrier awarded a contract to the Tidewater Construction Company, Norfolk, Virginia, to design and construct new hopper car facilities at that location. Design work began on December 21, 1982,

actual construction began on March 16, 1983 and was completed April 6, 1984. The Carrier states that the labor cost for sheet metal work involved in the project was $10,325 and the cost for materials was $14,130.

On January 23, 1984 the Organization filed a claim protesting the use of the contractor's (or its subcontractor's) employes to do its members' work at the Newport News site. The Carrier replied to the claim on August 16, 1984, stating that the contract had been executed on a "turnkey", basis, with the contractor being responsible for all the work involved. Work done in "turnkey" situations, and especially in the construction of new buildings, does not belong exclusively to the Carrier's sheet metal workers, according to the Carrier. The Carrier also stated that the sheet metal work had to be coordinated with other facets of the project, and the deadlines could not have been met with the skills, personnel and equipment available on the property.

In its submission the Carrier also refers to another claim from Local 499 of the Organization dated January 11, 1984, which apparently presents the same objection to the construction project. The Carrier denied this claim on March 14, 1984 on the grounds that this was a "turnkey" contract. The Organization does not refer to this correspondence in its submission before this Board, but it appears that both letters refer to the same problem. The Organization filed this claim before the Board on January 23, 1985.

The threshold issue in this case is whether the Board has jurisdiction to hear this claim, because the Organization failed to request a conference over the dispute on the property. As support for this argument the Carrier relies upon Section 2, Second of the Railway Labor Act, which provides in relevant part,

> Second. All disputes between a carrier or carriers and its or their employes shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employes thereof interested in the dispute.

This Board has interpreted this section to mean that in order for the Board to exert its jurisdiction over a dispute, the parties first must engage in face to face negotiations concerning the claim (Special Board of Adjustment No. 570, Award No. 129). In reaching this conclusion the Board stated that the language of the second section in itself establishes that the conference is a condition precedent to review of a dispute by the Adjustment Board.

As support for this interpretation the Board also has relied upon Section 2, Sixth of the Act, which reads in relevant part,

> Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation of application of agreements concerning rates of pay, rules or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: Provided, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: And provided further, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

The Carrier did not explicitly rely on this section in its submission regarding this claim. Nevertheless, this Board concurs with the earlier awards which hold that this language provides added evidence that Congress intended to require a face to face conference between the parties. By requiring the parties to establish a "time and place" for the conference, Congress clarified that only a meeting in person, rather than a simple exchange of correspondence, as occurred in this case, would fulfill the requirements of the second section.

In Third Division Award No. 10675, Referee R. J. Ables spelled out a sound reason for the requirement of a direct conference between the parties,

> The Railway Labor Act is bottomed on the principle that direct personal confrontation of representatives of both sides is the best way to get agreement. This is the essence of collective bargaining and of settling disputes.

In Award No. 129, this Special Board addressed the argument that in many cases the personal conference would be a futile exercise, given the exchange of correspondence between the parties. That decision notes that even if there is no prospect of settlement, a conference gives each party the opportunity to clarify the issues, evidence and arguments of the other party. This is often true, and this Board would add that no matter how adamant the parties may seem in their correspondence, there is nothing like a face to face meeting to soften the parties' positions and make a settlement more likely.

In its argument before the Board over this claim, the Organization has argued that the conference is not obligatory, and that its General Chairman may decide whether to request one. The language of Section 2, sixth, states that when one party requests a conference, the other party must set a reasonable time and place. This Board has held that this language in no way implies that the claiming party has the option of requesting or not requesting a conference. (S.B.A. No. 570, Award No. 129). Although either party may ask for a conference, if the non-claiming party fails to do so, the claiming party must request a conference before a claim can be advanced to the Board. In the Board's view this is a sound interpretation of the language of Section 2, sixth.

This language applies generally. In the instant case, however, there is a supporting contractual obligation for the parties to hold a conference before proceeding to the Board, as the Carrier has pointed out in its submission. Article VI, Section 9 of the September 25, 1964 agreement between the parties, states in relevant part:

> "Any dispute arising under Article I, Employe Protection, and Article II, Subcontracting, of this agreement, not settled in direct negotiations, may be submitted to the Board by either party, by notice to the other party and to the Board." (Emphasis added).

As the Board stated in Award No. 129, the term "negotiations" normally means something other than correspondence, within the history of American labor relations. And in any case, "direct" negotiations implies a personal meeting and discussion between the parties. Therefore, the contract also requires a face to face conference between the parties before advancing a claim to the Board. Claim dismissed for lack of jurisdiction, in the absence of any indication that a conference on the property was held or requested by the claiming party.

AWARD

Claim dismissed.

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to Claimant not be made.

Adopted at Chicago, Illinois on May 15 1987

Vincent E. Scallworth, Neutral Member

James E. Yost
Carrier Member

Carrier Member

Michael C. Lesnik
Carrier Member

M. J. Cullen
Labor Member

E. W. Mann
Labor Member

Don L. Davis
Labor Member