S.B.A. No. 570
Award No. 73
Case No. 90

SPECIAL BOARD OF ADJUSTMENT NO. 570

ESTABLISHED UNDER

AGREEMENT OF SEPTEMBER 25, 1964

Chicago, Illinois - April 2, 1968

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

STATEMENT OF CLAIM:

1. That the Carrier violated Article II, of the September 25, 1964 Agreement, including Rule 40 of the current Working Agreement, when it improperly subcontracted out the maintenance work, servicing and repairing of International Scout Truck #1927 on the date of October 21, 1966, to an outside firm identified as International Harvester Company, Oakland, California.

2. That accordingly, the Carrier be ordered to additionally compensate Motor Car Mechanic W. R. Hardy (hereinafter referred to as claimant) on the basis of the number of hours of work of the machinists' craft performed by employes of the above named outside firm in performance of the maintenance, servicing and repair work required on the automotive equipment here involved.

DISCUSSION: The identical issue contained in this dispute has been considered in sustaining Awards Nos. 3 and 42 and in denial Awards Nos. 63 and 64. The instant dispute has been vigorously and very proficiently prosecuted and defended before this neutral. The historical background of this controversy, the intense research presented by each of the parties, and the far-reaching effect of this determination, has demanded and received serious and intent consideration.

Briefly stated, the Organization contends that Carrier violated Article II, of the September 25, 1964 Agreement, including Rule 40 of the current Working Agreement when it allowed servicing and repair of certain leased automotive equipment by lessor's designated franchised dealership. The Organization contends that this action constitutes sub-contracting of work which contractually belongs to employes. The Organization places emphasis on the fact that Carrier has "operational control" of the involved vehicle, and therefore, repair work belongs to employes. It also contends that motor car mechanics have performed work on leased vehicles in the past.

Carrier contends that since it does not have title to the involved automotive equipment, Rule 40 of the current Agreement is not applicable, and that, therefore, the notice set out in Article II, Section 2, is not required. It also contends that the applicable Rule is contained in Article I, Section 2 (d). In other words, Carrier contends that its utilization of lessor's franchised dealers for service and repair of its leased automotive equipment does not constitute sub-contracting as contended by the Organization. Carrier also relies on Section 2 of the lease agreement to sustain its position, the pertinent part being:

> "2. Lessor during the term of this Lease shall for each vehicle leased hereunder - - - (d) Furnish to Lessee Lessor's credit card authorizing Lessee to charge all mechanical services, lubrication, tire replacement and repairs to the account of the Lessor."

In addition to the above quoted Section 2 of the Lease Agreement, the Lessor furnished Carrier with an "Operations and Maintenance Manual", which read:

> "1. GENERAL INFORMATION - -
> All repairs to your company vehicle are to be made at a franchised dealer selling and servicing that make of vehicle. All maintenance and service where practical, should be obtained from the dealership that delivered your company vehicle. You are not to charge services to your IVM card at other than franchised dealerships. Be certain that the dealership has your IVM Unit number when services are charged to our account."

The above Section 2 of the Lease Agreement and the "Operations and Maintenance Manual" furnished Carrier by Lessor are construed to be the pertinent parts of the entire Agreement Carrier had with Lessor.

FINDINGS: An exhaustive and intense inspection of Awards Nos. 3, 42, 63, and 64; the application of Article II of the September 25, 1964 Agreement, including Rule 40 of the Current Working Agreement; Article I, Section 2(d); and a study of the pertinent parts of the Lease Agreement compels this neutral to follow Awards Nos. 63 and 64 of this Board. It is found that these Awards (63 and 64) contain the better reasoning and are in keeping with principles of contract interpretation.

It is found that Carrier does not have title to the automotive equipment involved; that Carrier is not in the automotive vehicle business, thereby allowing it to lease automotive equipment; and, therefore, Rule 40 does not apply in the determination of this issue.

Although Article II of the Agreement of September 25, 1964, has been submitted as the basis for the Organization's contention, it is found that this case falls within the purview of Article I, Section 2(d). Article I,

Section 2(d) refers to "Lease or purchase of equipment * * * servicing or repairing of which is to be performed by the Lessor or Seller * * *." Article I, Section 2(d) involves the issue presented in this case. No notice of this leasing is required by Article I, Section 4. It is apparent that this special provision (Article I, Section 2(d)) gives recognition to the permission of leasing functions by Carrier. The practice of leasing or renting equipment is not considered to be "sub-contracting", and, therefore, this practice is not within the purview of Article 2 of the 1964 Agreement. It follows that the repair and/or maintenance work performed by the franchised dealer in accordance with the lease agreement did not consitute "sub-contracting" as contemplated by the September 25, 1964 Agreement.

Prior to the September 25, 1964 Agreement, Carrier had practiced extensive renting and leasing of automotive equipment. The same practice continued to be in evidence after the September 25, 1964 Agreement. It is found that there is nothing contained in the September 25, 1964 Agreement or in the report of Emergency Board No. 160 that prohibits or limits Carrier in its established practice of allowing the lessor of leased automotive vehicles to repair or maintain the same.

It is found that the employes, in this instance, were not adversely affected because of this lease agreement. However, in the event employes become adversely effected because of such agreements, they may avail themselves of the Washington Job Protection Agreement of 1936 as set out in Article I, Section 2(d) of the September 25, 1964 Agreement.

In conclusion, it is found that the September, 1964 Agreement did not intend to and does not prohibit or limit leasing practices existing prior to said Agreement. This Agreement merely subjected such practice to the protective provisions set out in Article I. In order to prohibit or limit such practice, subsequent negotiations on this subject must be entered into. This Board is without authority to write such non-existing prohibitions and limitations to this contract.

In keeping with Award No. 63, this claim is denied.

A W A R D

Claim denied.

Adopted at Chicago, Illinois, April 2, 1968.

M. E. Parks
W. L. Mugill
Carrier Members

We Dissent
James E. Yost
Richard E. Martin
Employe Members

REFEREE