

MAY - 8 1973

SPECIAL BOARD OF ADJUSTMENT NO. 839

B. OF R. C.

AWARD NO. 1

PARTIES TO THE DISPUTE:

International Brotherhood of Electrical Workers  
System Council No. 12

International Association of Machinists and  
Aerospace Workers, District No. 22

Organizations

and

Staten Island Rapid Transit Operating Authority

Carrier

STATEMENT OF CLAIM

IBEW

"1. That under the current Agreement, the Carrier improperly permitted other than Employees of the Carrier, represented by the International Brotherhood of Electrical Workers, to perform Electrical Workers' work on the property of the Staten Island Rapid Transit Operating Authority.

2. That accordingly, the Electrical Workers employed at Clifton Shop be compensated for each hour of work that was lost to their craft by other than one of their craft performing the work reserved to them by the Agreement.

3. That the total hours of work involved be computed at the overtime rate of pay and then divided as equally as possible between the Electrical Workers employed by the Carrier at their Clifton Shop."

IAM

"1. That under the current Agreement, the Carrier improperly permitted other than Employees of the Carrier, represented by the International Association of Machinists and Aerospace Workers, to perform Machinist work on the property of the Staten Island Rapid Transit Operating Authority.

2. That accordingly, the Machinists employed at Clifton Shop be compensated for each hour of work that was lost to their craft by other than one of their craft performing the work reserved to them by the Agreement.

3. That the total hours of work involved be computed at the overtime rate of pay and then divided as equally as possible between the Machinists employed by the Carrier at their Clifton Shop."

#### STATEMENT OF THE CASE

Fifty-two (52) R-44 cars were delivered to Carrier by the St. Louis Car Division of General Steel Industries, Inc.

Thereafter, Road Car Inspectors discovered a growing number of failures in support beams. St. Louis Car determined that the undercarriage support system for converters, inverters, compressors and related air-conditioning components failed to meet contractual requirements for structural integrity. Because of the potential danger of derailment, St. Louis Car advised that corrective retro-fit work would be undertaken immediately, without charge, under its basic warranty.

When Carrier discussed the matter with local officials of the Organizations, in mid-August, 1974, those officials disputed the propriety of Carrier's action; which continued dispute included a threatened work stoppage, appeals to the National Mediation Board, etc. Finally, at approximately 5:00 a.m., October 17, 1974, the Organizations did walk-out and established picket lines on Carrier's property.

Upon application by Carrier, the United States District Court for the Eastern District of New York issued a Temporary Restraining Order. Thereafter, the Court ordered that a Special Board of Adjustment be created, and the dispute be submitted to said Board.

The Court noted:

"For the purposes of this stipulation, it is understood that the dispute herein is a minor dispute concerning whether the performance of warranty work by the St. Louis Car Co. on SIRTOA property violates the Agreement of September 25, 1964 and the Supplementary Agreements of March 27 and March 28, 1974 between the parties hereto."

The National Mediation Board appointed the undersigned Neutral to this Board for the purpose of "...resolving the question of whether the performance of warranty work...on SIRTOA property violates..." the Agreements.

## OPINION OF BOARD

The record before us refers to (1) "warranty" work, (2) work which was incidental to the "warranty" work, (3) "warranty" and incidental work being performed on Carrier's property, and, of course, (4) damages, if a violation is found.

We note, at the outset, that St. Louis Car's performance of warranty work, per se, is not before us as an alleged violation.

At Page 3 of the IBEW Submission, we note:

"The Carrier has taken the position that the work is "warranty work"; we told them that we are not claiming the warranty work which was the structural support systems..."

Moreover, at Page 5 of the IAM Submission, we note:

"Significantly, neither the IAM nor the other union's representative have claimed or are claiming now that they should perform the warranty work although such work would be violative of the contract if performed on SIRTOA's property by persons outside the bargaining unit."

The Organizations do, however, claim work incidental to the warranty work. For instance, the IAM states:

"Rather, the IAM claims the right to perform work such as dismantling which must first be performed before the parts under warranty may be repaired."

The IBEW states:

"We do claim the Electrical work which was necessary for the warranty work to be performed."

Carrier argues that St. Louis Car insisted that it perform all work incidental to the warranty work as part of its guarantee, and that no charge was made for that work. While the record is not entirely clear in this regard, it appears that this insistence was brought to the attention of the Organizations in the early stages of the dispute. Among other defenses, Carrier notes that it is not required to "bifurcate", or minutely subdivide the work (see Award No. 109, Special Board No. 570), and that cost factors are a basis for contracting of work under Article II, Section 1(5) of the September 25, 1964 Agreement.

If this Board were confined solely to the 1964 Agreement, it could concede that Carrier's defenses are persuasive, especially under Article II, Section 1(5) mentioned above. But, this Board's review is not so confined. We may not avoid a thorough review of the March 27, 1974 (IBEW) and March 28, 1974 (IAM) Agreements. Paragraph 3 states:

"No outside contractors or other persons except employees of SIRTOA represented by the IBEW/IAM shall perform any electrical/machinists work, including work connected with the component parts, listed above, on the property of SIRTOA."

The Organizations urge that even though Carrier may have been entitled to have certain warranty work performed by outside concerns, the above cited language precludes the performance of the warranty work, or the incidental work, on the property of Carrier.

Carrier urges that its action was proper because St. Louis Car is not an outside contractor (because it was performing warranty work) and that there has not been a showing that the work in question was "electrical" work or "machinist" work. We do not concur with Carrier's position.

Although the March, 1974 Agreements recite that "all other" provisions of the 1964 Agreement remain in effect, this Board concludes that Paragraph 3 contains a broad prohibition against outside contractors and other persons performing work on the property. For instance, we note that the March, 1974 Agreements allow contracting out concerning certain component parts. Thereafter, Paragraph 3 specifically precludes work concerning those same component parts from being performed by outside concerns or other persons, on Carrier's property. Thus, we do not agree with Carrier's contention that St. Louis Car is not an "outside contractor" as that term is used in the Agreement, merely because it is performing warranty work. Even if St. Louis Car is not an "outside contractor", its employees would certainly appear to be "other persons except employees of SIRTOA represented..." by the Organizations. We conclude that the cited language, by its own terms, restricted Carrier from having certain work performed on its property; although that work could be performed away from the property.

We do not minimize Carrier's contention that the Organizations must show that the work in question is electrical and machinist work. But, as we review the specific provisions of the two March, 1974 Agreements, and the general classification rules, we are unable to conclude that the work performed by St. Louis Car is not electrical and machinist work, in part, even though there has not been a lengthy history of work in this regard.

Finally, we turn to the question of damages. The United States District Court for the Eastern District of New York ordered:

"That the Board is specifically authorized, should it so decide, to provide a remedy for the alleged breach of the collective bargaining agreement to either party whose position it sustains. The remedy may include, but not be limited to, monetary damages to the prevailing party should the majority of the Board so decide."

Carrier has demonstrated that all employees were fully employed during the material period, and urges that since no employee was adversely effected, no award of damages is appropriate. The Organizations counter by arguing that numerous Awards have adhered to the "loss of work opportunity" concept, and have awarded damages even though the employees were fully employed. The undersigned Neutral served as Referee with the Third Division of the National Railroad Adjustment Board in Award 19899. That Award traced much of the history of damage awards in the Railroad Industry, and (citing Brotherhood of Railroad Signalmen v. Southern Railway Company, 380 F2d 59 (CA 4)) concluded that damages are properly awarded notwithstanding a "full employment" situation, as long as the claim is not speculative.

However, this Board is not inclined to award damages concerning the "warranty" work performed on SIRTOA property. While we have found that Paragraph 3 of the March, 1974 Agreements prohibited Carrier from having that work performed on the property; nonetheless, the record and the Submissions to this Board are singularly clear that such a claim for monetary damages was never presented to the Carrier while the matter was handled on the property. As cited above, the IBEW states, "...We told them that we are not claiming the warranty work." Moreover, although IAM noted that performance of warranty work would be violative of the contract if performed on SIRTOA's property, that conclusion was immediately preceded by the statement, "...neither the IAM nor the other union's representative have claimed or are claiming now that they should perform warranty work."

Thus, under this record, we will not award damages concerning the performance of warranty work. It should be noted that this Award is a case of first impression concerning the prohibitions of Paragraph 3 of the March, 1974 Agreements and is, of course, limited to the record before the Board. Of necessity, we may not attempt to outline a precedential analysis concerning future records in disputes not now before us.

A damage award concerning "incidental" work performed on SIRTOA's property is not similarly controlled. In that regard,

the Organizations claimed that work in a timely fashion and have continued said claims to this Board.

We are not unmindful of the assertion that St. Louis Car refused to allow other than its employees to participate in the work. But that agreement or understanding was between the Carrier and St. Louis Car. There is absolutely nothing of record to suggest that either Organization was a party to (or had knowledge of, or acquiesced in) that understanding. For example, long after the warranty arrangement was entered into, Carrier agreed with IAM that its employees would remove and replace D-3 compressors and components. In any event, it is well established that a Carrier may not abrogate its contractual obligations to a labor organization by entering into a conflicting contract with another source.

Accordingly, we will sustain the claim, solely as it relates to the performance of work by St. Louis Car which was not directly related to the retro-fit warranty work, but rather, was Electrical work or Machinist work which was necessary for the warranty work to be performed, such as work connected with removal and replacing of the component parts. While an award of damages at overtime rates may be appropriate under certain circumstances, we find no basis for such an Award under this record. Thus, the claim is sustained to the extent that Carrier shall pay straight time rates for all time consumed by St. Louis Car while performing work incidental to warranty work, as discussed above. The matter will be remanded to the parties for a determination of the specific amounts due, and this Board shall retain jurisdiction to resolve any disputes between the parties concerning the amounts due.

#### FINDINGS

Upon a consideration of the entire record, this Board finds that:

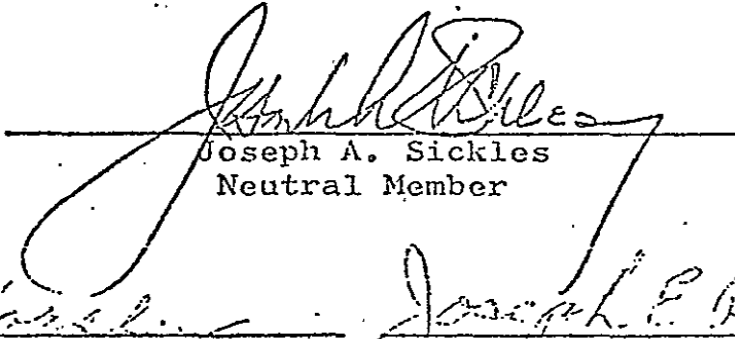
This Board has jurisdiction of the dispute.

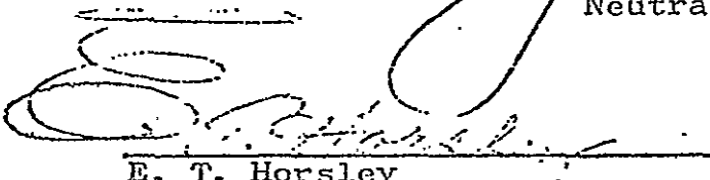
The parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended.

All parties received due notice of hearing.

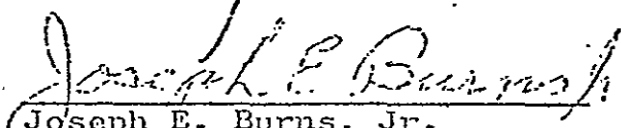
AWARD

1. Carrier violated the March 27 and March 28, 1974 Agreements when it permitted individuals, other than employees of the Carrier represented by the Organizations, to perform electrical work and machinist work on the property of Carrier.
2. Claims for monetary damages are denied insofar as they relate to "warranty" work performed on the property of Carrier.
3. Claims for monetary damages, at the straight time rate, are sustained insofar as they relate to electrical and machinist work, incidental to the warranty work, performed on the property of the Carrier, as discussed in the Opinion of the Board, above.

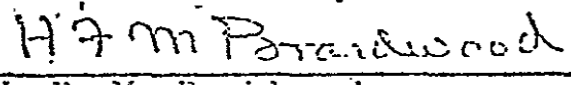
  
Joseph A. Sickles  
Neutral Member

  
E. T. Horsley  
Carrier Member

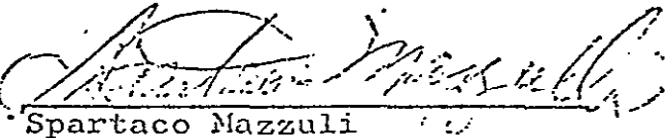
(Concur) (Dissent) No. 1  
(Concur) (Dissent) No. 2  
(Concur) (Dissent) No. 3

  
Joseph E. Burns, Jr.  
Organization Member

(Concur) (Dissent) No. 1  
(Concur) (Dissent) No. 2  
(Concur) (Dissent) No. 3

  
H. F. M. Braidwood  
Carrier Member

(Concur) (Dissent) No. 1  
(Concur) (Dissent) No. 2  
(Concur) (Dissent) No. 3

  
Spartaco Mazzuli  
Organization Member

(Concur) (Dissent) No. 1  
(Concur) (Dissent) No. 2  
(Concur) (Dissent) No. 3

DECEMBER 5, 1974

SPECIAL BOARD OF ADJUSTMENT NO. 839

SUPPLEMENT TO AWARD NO. 1

OFFICE OF  
PRESIDENT

MAY - 8, 1975

PARTIES TO THE DISPUTE:

International Brotherhood of Electrical Workers  
System Council No. 12

International Association of Machinists and  
Aerospace Workers, District No. 22

Organizations

and

Staten Island Rapid Transit Operating Authority

Carrier

STATEMENT OF CASE

On December 5, 1974, Special Board of Adjustment No. 839 issued its OPINION, FINDINGS and AWARDS concerning the claims submitted to it, and heard, on November 18, 1974.

In the December 5, 1974 OPINION and AWARD, the Board noted that it had been established pursuant to an Order of the United States District Court for the Eastern District of New York, and that said Court had stated:

"That the Board is specifically authorized, should it so decide, to provide a remedy for the alleged breach of the collective bargaining agreement to either party whose position it sustains. The remedy may include, but not be limited to, monetary damages to the prevailing party should the majority of the Board so decide."

Special Board of Adjustment No. 839 determined, in its December 5, 1974 OPINION, FINDINGS and AWARD:

"Accordingly, we will sustain the claim, solely as it relates to the performance of work by St. Louis Car which was not directly related to the retro-fit warranty work, but rather, was



Electrical work or Machinist work which was necessary for the warranty work to be performed, such as work connected with removal and replacing of the component parts. While an award of damages at overtime rates may be appropriate under certain circumstances, we find no basis for such an Award under this record." Thus, the claim is sustained to the extent that Carrier shall pay straight time rates for all time consumed by St. Louis Car while performing work incidental to warranty work, as discussed above. The matter will be remanded to the parties for a determination of the specific amounts due, and this Board shall retain jurisdiction to resolve any disputes between the parties concerning the amounts due." (underscoring supplied)

Finally, the December 5, 1974 AWARD stated:

- "1. Carrier violated the March 27 and March 28, 1974 Agreements when it permitted individuals, other than employees of the Carrier represented by the Organizations, to perform electrical work and machinist work on the property of Carrier.
2. Claims for monetary damages are denied insofar as they relate to "warranty" work performed on the property of Carrier.
3. Claims for monetary damages, at the straight time rate, are sustained insofar as they relate to electrical and machinist work, incidental to the warranty work, performed on the property of the Carrier, as discussed in the Opinion of the Board, above."

Subsequent to reasonable notification to all parties, Special Board of Adjustment No. 839 reconvened on March 19, 1975 for the purpose of resolving a dispute between the parties concerning specific monetary amounts due.

On April 15, 1975, the Board met, in Executive Session, to adopt this Supplement to Award No. 1.

#### STATEMENT OF FACTS

On December 16, 1974, Counsel to the Organizations advised the Board that Carrier refused to discuss any dispute concerning amounts of damages due, and requested the Board to reconvene, under its retained jurisdiction, to issue a final Award, supplementing Award No. 1. (See Board Exhibit #1, attached hereto).

On December 20, 1974, Carrier disputed this Board's authority to take any further action. (See Board Exhibit #2, attached hereto).

On December 23, 1974, Counsel to the Organizations renewed the request that the Board resolve the question of amounts of damages due. (See Board Exhibit #3, attached hereto).

On January 3, 1975, the Chairman of the Board concurred that it was "...appropriate to reconvene the Board to consider the question of the specific amount of damages due." (see Board Exhibit #4, attached hereto), and on February 7, 1975, proposed that the Board reconvene at 1:00 p.m. on March 19, 1975. (See Board Exhibit #5, attached hereto).

No request for postponement or suggested alternate date to reconvene was received by the Board.

The Board met at 1:00 p.m. on March 19, 1975, at the offices of the National Railroad Adjustment Board, Chicago, Illinois. Although the Chairman and the Organization members were present, no representative of the Carrier was present. The Board considered written evidence (see Exhibits #6, #7, #8 and #9, attached hereto) and oral statements, under oath, concerning the question of damages due under Award No. 1 of this Special Board of Adjustment.

At the conclusion of the March 19, 1975 Hearing, the Board members present agreed to meet in Executive Session, on April 15, 1975, at the offices of the National Mediation Board, Washington, D. C. for purposes of adopting an Award concerning damages. On March 21, 1975, the Chairman of the Board so advised the Carrier members of the Board, and invited and urged their attendance. (See Attachment A).

By copy of April 7, 1975 letters to Carrier members, the Chairman of this Board became aware that the Carrier members had been relieved from all further duties and responsibilities concerning this Board. (See Attachments B and C).

The Board met, in Executive Session, in Washington, D.C. on April 15, 1975, and adopted this Supplement to Award No. 1 of SPECIAL BOARD OF ADJUSTMENT NO. 839.

#### OPINION OF BOARD

The Order of the United States District Court for the Eastern District of New York, cited, in part, above, gave this Board of Adjustment broad authority in fashioning a remedy for breaches of the Agreements in question.

The Organizations have presented evidence of amounts due within the dictates of Award No. 1 of this Board. That evidence consisted of tabulating the number of man hours consumed by St. Louis Car while performing work incidental to warranty work.

The evidence fails to suggest that either Organization overstated the number of man hours involved, as their claims are based upon the amounts of work in question. Moreover, although Carrier had full knowledge of the proceedings, and ample opportunity to present any evidence it so desired, it failed to do so. Under those circumstances, we would dismiss the Organization's evidence only if it were obviously inflated or incredible. We are unable to make such a determination under this record.

The IBEW has demonstrated 903 hours at the contractual rate of \$6.13 for a total of Five Thousand Five Hundred and Thirty-five Dollars and thirty-nine cents (\$5,535.39).

The IAM has demonstrated 580 hours at the contractual rate of \$6.13 for a total of Three Thousand Five Hundred and Fifty-five Dollars and forty cents (\$3,555.40).

The claims sought compensation for the employees at Clifton Shop. The IBEW has demonstrated that twenty-one (21) employees were so employed during the applicable period. Those employees are designated on Board Exhibit #8 (attached hereto) as Electricians and Temporary Electricians. The IAM has demonstrated that eleven (11) employees were so employed during the applicable period. Those employees are designated on Board Exhibit #9 (attached hereto) as Machinists and Temporary Machinists.

#### FINDINGS

Upon a consideration of the entire record, this Board finds that:

This Board has jurisdiction of the dispute.

The parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended.

All parties received due notice of hearing.

# AWARD

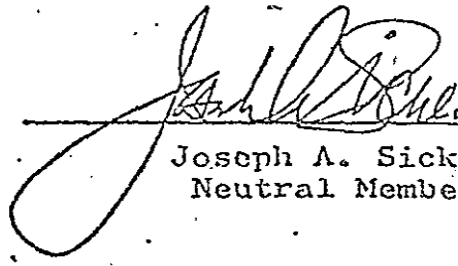
1. That Carrier shall compensate the employees, represented by the IBEW, and employed at Clifton Shop in the total amount of Five Thousand Five Hundred and Thirty-five Dollars and thirty-nine cents (\$5,535.39) and that said compensation be equally distributed to said employees as follows:

DICERO, J.	\$369.02
NAVARINO, V.	369.02
CHILDS, H.	369.02
MCGOWAN, R.	369.02
TOLAS, JR., C.	369.02
SCHIRUEFER, R.	369.02
MCGOWAN, L. C.	369.02
DIMINO, C. P.	369.02
DISALVO, S.	369.02
BORSKI, W.	369.02
MCGOWAN, G.	369.02
TERRELL, G.	369.02
WALSH, T. P.	369.02
RAIA, T.	369.02
SAWH, A.	369.02

2. That Carrier shall compensate the employees, represented by the IAM, and employed at Clifton Shop in the total amount of Three Thousand Five Hundred and Fifty-five Dollars and forty cents (\$3,555.40) and that said compensation be equally distributed to said employees as follows:

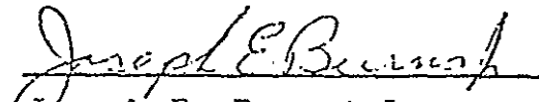
RAGGI, P. F.	\$355.54
ERRICHELLO, L.	355.54
BOLOGNIA, F.	355.54
RUSO, L.	355.54
FLYNN, W. J.	355.54
OCHMANN, W.	355.54
BISHOP, A.	355.54
ABARNO, D. F.	355.54
MARSETTI, J.	355.54
RUTIGLIANO, J.	355.54

3. That Carrier shall comply with this Award within thirty (30) days of the date hereof.

  
Joseph A. Sickles  
Neutral Member

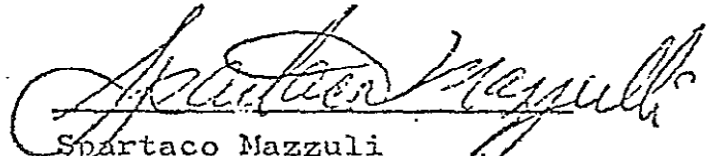
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E. T. Horsley  
Carrier Member  
(Concur) (Dissent)

  
Joseph E. Burns, Jr.  
Organization Member  
(Concur) (Dissent)

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H. F. M. Braidwood  
Carrier Member  
(Concur) (Dissent)

  
Spartaco Mazzuli  
Organization Member  
(Concur) (Dissent)

APRIL 15, 1975

VLADECK, ELIAS, VLADECK & LEWIS, P. C.

COUNSELLORS AT LAW

1501 BROADWAY • NEW YORK, N.Y. 10036

3/17/75  
HEARING

BOARD EX.#1

STEPHEN G. VLADECK  
SYLVAN H. ELIAS  
JUDITH P. VLADECK  
EVERETT E. LEWIS  
SHELDON ENGELHARD

THOMAS T. KILHENNY  
DEBORAH A. WATARS  
ROBERT L. JAUVTIS  
PHILIP H. KLING

WRITER'S DIRECT DIAL

221-2555

AREA CODE 212  
221-2550

IRA S. ROBBINS  
COUNSEL

December 16, 1974

Mr. Joseph A. Sickles  
416 Hungerford Drive  
Rockville, Maryland 20850

Re: IBEW, System Council No. 12  
IAMAW and SIRTOA Award No. 1

Dear Mr. Sickles:

The Award issued by the System Board contained the following statement in the last sentence of the Board Opinion:

"The matter will be remanded to the parties for a determination of the specific amounts due, and this Board shall retain jurisdiction to resolve any disputes between the parties concerning the amounts due."

We have been advised by counsel to the Carrier that it has no intention of discussing or resolving any dispute concerning the amounts due pursuant to the Opinion or the Award.

Under these circumstances, therefore, we request that the Board reconvene as soon as possible with the purpose of issuing a final Award supplementing Award No. 1, determining the amounts due to the employees represented by the IAM and IBEW. The Award should state that this represents the Board's final judgment on this matter.

Mr. Joseph A. Sickles

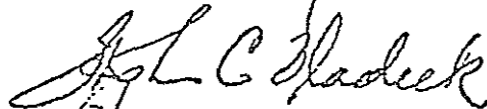
-2-

December 16, 1974

We would appreciate it if the Board could act with reasonable dispatch so that the matter may be concluded.

Very truly yours,

VLADECK, ELIAS, VLADECK & LEWIS, P.C.

  
Stephen C. Vladeck

SCV:mb

CC: Mr. E. T. Horsley  
Mr. H.F.M. Braidwood  
Mr. Joseph E. Burns, Jr.  
Mr. Spartaco Mazzuli  
Mr. John Peterpaul  
John G. de Roos, Esq.

M

Staten Island  
Rapid Transit  
Operating Authority

370 Jay Street Brooklyn, New York 11201 Phone 212 852-5000

3/19/75  
HEARING  
BOARD Ex.#2

David L. Yunich  
Chairman and  
Chief Executive Officer

Lawrence R. Bailey  
Leonard Braun  
William L. Butcher  
Donald H. Elliott  
Justin N. Feldman  
Harold L. Fisher  
Mortimer J. Gleeson  
Edwin G. Michaelian  
Eben W. Pyne  
Constantine Sidamon-Eristoff

John G. deRoos  
General Counsel

December 20, 1974

Mr. Joseph A. Sickles  
416 Hungerford Drive  
Rockville, Maryland 20850

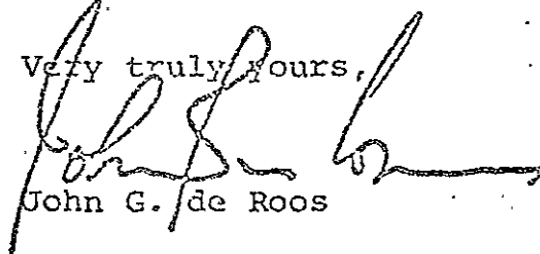
Re: IBEW, System Council No. 12  
IAMAW and SIRTOA Award No.1

Dear Mr. Sickles:

I have received a copy of the letter dated December 16, 1974, addressed to you by Stephen C. Vladeck, attorney for the IAM and IBEW, requesting that Special Board of Adjustment No. 839 be reconvened and a final award made.

Under the terms of the submission to Board 839, the Board was required to issue its award "on or before Monday, November 26, 1974." This time was extended, at your request, to Friday, December 6, 1974. No further requests for extensions of time were made or granted. Accordingly, Special Board 839 has no authority to take any further action in this matter.

Very truly yours,

  
John G. de Roos

cc: Mr. E.T. Horsley  
Mr. H.F.M. Braidwood  
Mr. Joseph E. Burns, Jr.  
Mr. Spartaco Mazzuli  
Stephen C. Vladeck, Esq.-



VLADECK, ELIAS, VLADECK & LEWIS, P. C.

COUNSELLORS AT LAW

1501 BROADWAY • NEW YORK, N.Y. 10036

3/19/75

HEARING

BOARD EX #3

STEPHEN C. VLADECK  
SYLVAN M. ELIAS  
JUDITH P. VLADECK  
EVERETT E. LEWIS  
SHELDON ENGELHARD

THOMAS T. KILHENNY  
DEBORAH A. WATARZ  
ROBERT L. JAUVTIS  
PHILIP M. KLING

WRITER'S DIRECT DIAL

221-2555

AREA CODE 212  
221-2550

IRA S. ROBBINS  
COUNSEL

December 23, 1974

Mr. Joseph A. Sickles  
416 Hungerford Drive  
Rockville, Maryland 20850

Re: IBEW, System Council No. 12  
IAMAW and SIRTOA Award No. 1

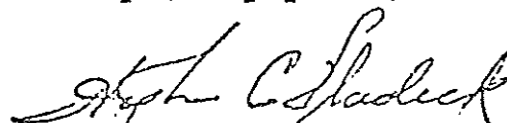
Dear Mr. Sickles:

I have received a copy of the letter to you dated December 20, 1974, from John G. de Roos, general counsel of SIRTOA.

We do not believe that Mr. de Roos is correct in determining that the Special Board of Adjustment "has no authority to take any further action in this matter." We renew our request that the Board proceed as expeditiously as possible to resolution of the amount of damages to which our clients are entitled.

We regard your Award #1 as establishing liability and believe your subsequent proceedings are in the nature of an inquest consistent with that Award.

Very truly yours,

  
Stephen C. Vladeck

SCV:IS

cc: Mr. E. T. Horsley  
Mr. H.F.M. Braidwood  
Mr. Joseph E. Burns, Jr.  
Mr. Spartaco Mazzuli  
Mr. John Peterpaul  
Plato E. Papps, Esq.  
Herman B. Poul, Esq.

3/19/75

BOARD OF ADJUSTMENT

BOARD # 4

January 3, 1975

Stephen C. Vladeck, Esquire  
Vladeck, Elias, Vladeck & Lewis  
1501 Broadway  
New York, N. Y. 10036

John G. de Roos, Esquire  
Staten Island Rapid Transit Operating  
Authority  
370 Jay Street  
Brooklyn, N. Y. 11201

Re: Special Board of Adjustment #839

Gentlemen:

I have considered the various recent correspondence concerning the request by the Organization Members to reconvene the Board concerning a specific Award of Damages.

The Order of the United States District Court for the Eastern District of New York was quite broad in Paragraph 9 concerning the Board's authority to provide a remedy for a breach of the Agreement.

In the view of the undersigned, obviously concurred in by the Organization Members of the Board, the Board had authority to request the parties to determine the specific amounts due and retain jurisdiction to resolve any disputes between the parties concerning amounts due.

I understand, from the correspondence, that the Carrier has refused to meet with the Organizations in this regard. Accordingly, I feel it appropriate to reconvene the Board to consider the question of the specific amount of damages due.

Moreover, I find nothing in the National Mediation Board's letters of appointment and authority which would restrict a reconvening of the Board.

S. C. Vladeck, Esquire  
J. G. de Roos, Esquire  
January 3, 1975  
Page 2

I will be away from my office most of the week of January 6, 1975, but upon my return I will address myself to the question of a time and place for reconvening the Board.

Very truly yours,

Joseph A. Sackles, Chairman  
Special Board of Adjustment #839

JAS/pla

cc: E. T. Horsley  
H. F. M. Draidwood  
J. E. Burns, Jr.  
S. Mhazuli  
J. Peterpaul  
R. E. Papps, Esq.  
R. J. Carvatta

3/19/75  
HEARING  
BOARD EX. #5

February 7, 1975

Stephen C. Vladeck, Esquire  
Vladeck, Elias, Vladeck & Lewis  
1501 Broadway  
New York, N. Y. 10036

John G. deRoos, Esquire  
Staten Island Rapid Transit Operating  
Authority  
370 Jay Street  
Brooklyn, N. Y. 11201

Re: Special Board of Adjustment #839

Gentlemen:

On January 3, 1975, I corresponded with you advising that I felt it appropriate to reconvene the subject Board to consider the question of the specific amount of damages due.

I have hesitated in rescheduling the matter because I became aware that one of the members of the Board was subject to a period of jury duty.

I propose that Board #839 meet at the offices of the National Railroad Adjustment Board, 220 South State Street, Chicago, Illinois, at 1:00 p.m. on Wednesday, March 19, 1975.

At that time, I anticipate that the two Organizations will be prepared to move forward to demonstrate the amounts of damages to which each considers they are entitled. I also anticipate that the Carrier will be prepared to offer any defenses it deems appropriate concerning the amounts of damages due.

I hereby request that you bring this matter to the attention of the appropriate officials of the Organization and Carrier so they may plan accordingly.

S. Vladeck, Esq.  
J. delRoos, Esq.  
February 7, 1975  
Page 2

I do not mean to be dictatorial concerning the date for reconvening the hearing, and will consider an alternate time if it is more convenient to the parties. However, if I do not receive a request for a changing of time by February 24, 1975, I will assume that the date is firm.

Very truly yours,

Joseph A. Sickles

JAS/plm

cc: E. T. Horsley  
H.F.M. Braidwood  
J. E. Burns, Jr.  
S. Mazzulli  
R. Carvatta

3/19/75  
HEARING  
BOARD Exhibit No. 6

SPECIAL BOARD OF ADJUSTMENT NO. 839. AWARD NO. 1. S I R T O A.

The following is a list of the number of man-hours claimed by the Electrical Workers for work performed on SIRT OA R-44 Cars by the St. Louis Car Company Retro-fit Team:

1. The disconnecting and connecting of the electrical leads to the Inverter:  
4 man-hours per car x 52 cars = 208 man-hours.
2. Removing and replacing the Inverter:  
1/2 man-hour per car x 52 cars = 26 man-hours.
3. The disconnecting and connecting of the electrical leads to the Converter:  
2 man-hours per car x 52 cars = 104 man-hours.
4. Removing and replacing of the Converter:  
1/2 man-hour per car x 52 cars = 26 man-hours.
5. The removing and replacing of the air conditioning unit:  
7 man-hours per car x 52 cars = 364 man-hours.
6. The disconnecting and connecting of the Electrical Battery Leads:  
1/4 man-hour per car x 52 cars = 13 man hours.
7. The removing and replacing of the Electrical Batteries:  
2 man-hours per car x 52 cars = 104 hours.
8. The removing and replacing of the Electrical Decelostat:  
1/2 man-hour per car x 52 cars = 26 man-hours.
9. The removing and replacing of Exhaust Fans: (This means the installation and removal of large shop fans to remove welding fumes from the shop).  
32 man hours total.
10. Total man-hours claimed = 903 man-hours. 903 hrs. x 36.13 per hr.  
= \$5555.39

*Am*

3/19/75 - BOARD EXHIBIT #7


BOARD #7

SPECIAL BOARD OF ADJUSTMENT NO. 839 - Award No. 1 SIRTOA

The following is a list of the number of man-hours claimed by the Machinist for work performed on SIRTOA R-44 cars by the St. Louis Car Company Retro-fit team:

1. Removing and applying - Decellostat - 1 hour per car  
(52) cars - 52 man hours.
2. Removing and applying of Air Compressor - 2 men - 3 hours  
each A car only - 36 cars - 216 man hour
3. Removing and replacing Air Condition Compressor - 2 men -  
3 hours - 52 cars - man hours 312. -

580 total man hours to be distributed among all employees identified in Board Exhibit #9.

  
Joseph E. Burns, Jr.  
Board Member 839

STAT ISLAND RAPID TRANSIT OPERATING AUTHORITY  
MECHANICAL AND POWER DEPARTMENT  
SENIORITY OF EMPLOYEES COMING UNDER THE SHOP CRAFTS AGREEMENT  
JANUARY 1, 1975  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

HEARING  
BOARD EXHIBIT # 8

NUMBER	OCCUPATION AND NAMES	IBM NUMBER	DATE BORN	DATE LAST ENTERED SERVICE	SENIORITY DATE CRAFT ASSIGNED	SENIORITY CLASSIFICATION
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ELECTRICIANS

	MARTIN, T.J.	801043	7/10/11	7/13/27	8/29/31	SUB STA. OPR.
	CURLEY, T.J.	801154	9/02/23	9/11/42	10/04/56	LEAD SUB STA NTR.
	WIDMER, W.J.	801159	1/23/14	10/14/59	10/14/59	SUB STA. NTR.
	DICERO, J.	801156	2/06/10	1/31/44	3/02/61	
	NAVARINO, V.	801157	2/05/31	12/03/56	5/14/64	
	CHILDS, H.	801162	11/02/15	10/10/66	10/10/66	
	MCGOWAN, R.	801336	5/26/44	7/20/64	8/16/68	
	TOLAS, JR. C.	801335	7/26/36	4/28/64	1/15/70	SUB STA. OPR.
	DIONISIO, J.	800571	7/11/27	1/8/57	2/6/74	SUB STA. NTR.
	HALLIGAN, J.	992121	9/20/25	4/29/74	4/29/74	SUB STA. NTR.
	KILSTROM, E.	995135	11/2/44	7/17/74	7/17/74	
	SCHUEFER, R.	995140	8/22/41	8/26/74	8/26/74	

TEMPORARY ELECTRICIANS

	MCGOWAN, L.C.	801367	10/22/50	4/21/69	1/21/71	
	DIMINO, C.P.	800906	10/03/48	12/06/71	12/07/71	
	DISALVO, S.	800916	3/19/53	7/28/72	9/20/72	
	BORSKI, W.	800917	5/29/43	10/11/72	12/06/72	
	MCGOWAN, G.	800920	12/11/47	12/18/72	5/02/72	
	TERRELL, G.	995064	2/26/53	4/09/73	7/18/73	
	WALSH, T. P.	995102	9/30/43	10/22/73	7/15/74	
	RAIA, T.	995105	9/07/53	10/31/73	7/15/74	
	SAMH, A.	995138	5/06/45	8/19/74	8/19/74	

ELECTRICIAN HELPER

	*MCGOWAN, L.C.	801367	10/22/50	4/21/69	4/01/70	
	*DIMINO, C.P.	800906	10/03/48	12/06/71	12/06/71	
	*DISALVO, S.	800916	3/19/53	7/28/72	7/28/72	
	*BORSKI, W.	800917	5/29/43	10/11/72	10/11/72	
	*MCGOWAN, G.	800920	12/11/47	12/18/72	12/18/72	
	*TERRELL, G.	995064	2/26/53	4/09/73	4/09/73	
	KURSCHNER, L.	995081	6/21/52	8/02/73	8/02/73	
	*WALSH, T.P.	995102	9/30/43	10/22/73	10/22/73	
	*RAIA, T.	995105	9/07/53	10/31/73	10/31/73	
	*SAMH, A.	995138	5/6/45	8/19/74	8/19/74	

WORKING AS MECHANIC

In accordance with Rule 28 of the current agreement this roster is open to protest for a period of sixty (60) days from date of posting.

BOARD EXHIBIT NO. 8



SENIORITY OF EMPLOYEES COMING UNDER THE SHOP CRAFTS AGREEMENT  
JANUARY 1, 1975  
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AERO SPACE WORKERS  
BOARD 839 - EXHIBIT #9

3/19/75  
HEARING  
BOARD EXHIBIT # 9

NUMBER	OCCUPATION AND NAMES	IGM NUMBER	DATE BORN	DATE LAST ENTERED SERVICE	SENIORITY DATE CRAFT ASSIGNED	SENIORITY CLASSIFICATION
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MACHINISTS

1.	RAGGI P.F.	970159	7/16/35	9/23/55	7/01/65	
2.	LUPU, A.N.	801107	9/21/29	4/11/56	7/01/65	SHOP FOREMAN
3.	ERRICHIELLO, L.	801236	9/26/34	6/07/56	10/11/65	
4.	BOLOGNIA, F.	800363	3/01/42	3/18/63	4/29/69	
5.	RUSSO, L.	801341	1/04/44	5/24/65	8/01/69	
6.	FLYNN, W.J.	991338	12/30/33	1/16/56	11/24/71	
7.	OCHAMN, W.	991337	2/03/32	1/9/56	6/29/73	
8.	BISHOP, A.	995142	6/29/17	9/24/74	9/24/74	

TEMPORARY MACHINISTS

1.	ABARNO, D.F.	801358	4/15/43	1/21/69	2/11/71	
2.	MARSETTI, J.	800910	10/29/51	3/29/72	4/24/72	
3.	RUTIGLIANO, J.	995095	6/16/54	10/1/73	10/1/73	

MACHINIST HELPERS

1.	COMO, S.	806221	8/29/12	9/14/56	9/18/67	
2.	*ABARNO, D.	801358	4/15/43	1/21/69	1/28/69	
3.	*MARSETTI, J.	800910	10/29/51	3/29/72	3/29/72	
4.	*RUTIGLIANO, J.	995095	6/16/54	10/01/73	10/01/73	

WORKING AS MECHANIC

In accordance with Rule 28 of the current agreement this roster is open to protest for a period of sixty (60) days from date of posting.

LAW OFFICES  
JOSEPH A. SICKLES  
410 HUNGERFORD DRIVE  
ROCKVILLE, MARYLAND 20850  
AREA CODE 301 424-7400

ATTACHMENT A

OF COUNSEL  
FERRETTI AND EHRLICH

RICHARD S. EHRLICH  
VINCENT E. FERRETTI, JR.

March 21, 1975

E. T. Horsley  
National Railroad Adjustment Board  
20th Floor, Consumers Building  
220 So. State Street  
Chicago, Illinois 60604

H. F. M. Braidwood  
National Railroad Adjustment Board  
20th Floor, Consumers Building  
220 So. State Street  
Chicago, Illinois 60604

Re: Special Board of Adjustment No. 839

Gentlemen:

Pursuant to the notification contained in my February 7, 1975 letter to Messrs. Vladeck and deRoos, with a copy to you, Special Board of Adjustment No. 839 met at the offices of the National Railroad Adjustment Board in Chicago, at 1:00 p.m. on March 19, 1975.

At that time, the Organizations presented evidence concerning the amounts of damages due under the December 5, 1974 Decision of the Board.

It is noted that neither of you were present at the hearing.

Please be advised that the Board has agreed to meet in Executive Session on Tuesday, April 15, 1975 for purposes of adopting an Award concerning damages. The meeting is scheduled to convene at 2:00 p.m. in the offices of the National Mediation Board in Washington, D. C.

Both of you are invited, and urged, to attend. In the event you anticipate attending, and either the time or the place is inconvenient, please advise at the earliest possible opportunity so that we may consider rescheduling of the Executive Session.

E. T. Horsley  
H. F. M. Braidwood  
March 21, 1975  
Page 2

For planning purposes, I urge that you reply at the earliest possible time.

Very truly yours,

Joseph A. Sickles, Chairman  
Special Board of Adjustment No. 839

JAS/plm

cc: J. Burns, Jr.  
S. Mazzulli  
S. Vladeck, Esq.  
J. deRoos, Esq.  
H. Carvatta

ATTACHMENT B

MA

Staten Island  
Rapid Transit  
Operating Authority

370 Jay Street Brooklyn, New York 11201 Phone 212 652-5000

David L. Yonich  
Chairman and  
Chief Executive Officer

Lawrence R. Bailey  
Leonard Braun  
William L. Butcher  
Donald H. Elliott  
Justin H. Feldman  
Harold L. Fisher  
Mortimer J. Gleason  
Edwin G. Michaelian  
Eben W. Pyne  
Constantine Sidamon-Eristoff

John G. deRoos  
General Counsel

April 7, 1975

Mr. H. F. M. Braidwood  
National Railroad Adjustment Board  
20th Floor, Consumers Building  
220 So. State Street  
Chicago, Illinois 60604

Dear Mr. Braidwood:

I am writing this letter to express our appreciation to you for your services as a carrier member on Special Board of Adjustment 839.

As you know, this Special Board was created pursuant to an order of the United States District Court for the Eastern District of New York in a then pending action. Special Board of Adjustment 839 issued Award No. 1 within the time frame specified in the order and the lawsuit involved was discontinued.

Despite the contentions of the employee representatives, this Board is no longer in existence. So that there can be no doubt that you have no further responsibility in this matter, this Authority hereby revokes any authorization to further represent it as a carrier member of such Special Board.

Thank you for your efforts on our behalf.

Very truly yours,

John G. de Roos

cc: Joseph A. Sickles, Esq.  
416 Hungerford Drive  
Rockville, Maryland 20850

ATTACHMENT C

MA

Staten Island  
Rapid Transit  
Operating Authority

379 Jay Street Brooklyn, New York 11201 Phone 212 852-5000

David L. Yunich  
Chairman and  
Chief Executive Officer

Lawrence A. Bailey  
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Eben W. Pyne  
Constantine Sidamon-Eristoff

John G. deRoos  
General Counsel

April 7, 1975

Mr. E. T. Horsley  
National Railroad Adjustment Board  
20th Floor, Consumers Building  
220 So. State Street  
Chicago, Illinois 60604

Dear Mr. Horsley:

I am writing this letter to express our appreciation to you for your services as a carrier member on Special Board of Adjustment 839.

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Thank you for your efforts on our behalf.

Very truly yours,

John G. de Roos

cc: Joseph A. Sickles, Esq.  
416 Hungerford Drive  
Rockville, Maryland 20850