

SPECIAL BOARD OF ADJUSTMENT NO. 957

SOUTHEASTERN PENNSYLVANIA :
TRANSPORTATION AUTHORITY :
"AUTHORITY" :

AND :

BROTHERHOOD OF MAINTENANCE :
OF WAY EMPLOYES :
"ORGANIZATION" :

AWARD NO. 18

STATEMENT OF CLAIM

Claim of the Brotherhood (BMWE-84-8-F11) that:

The Authority violated Section 101 (b) and (c) of the current Collective Bargaining Agreement and continues to be in violation, when it allowed employees not represented or entitled by the Agreement to perform work contractually owned by Claimants W. Ludwig, A. Benz, and G. McGovern.

REMEDY:

The Authority will cease and desist its misapplication of the work assignment provisions of the Agreement, allowing only those employees entitled to perform such work to be so assigned, and that compensation, equal to the number of hours worked by those employees not entitled to said work, be paid Claimants Ludwig, Benz, and McGovern from the date said violation took place up to and including the last day said ongoing practice is discontinued.

OPINION OF THE BOARD

Claimants, W. Ludwig, A. Benz, and G. McGovern, contend that work to which they were contractually entitled was improperly done by other employees. The Organization seeks payment to the Claimants equal to that received by the employees who performed

the disputed work.

The basic facts are not in dispute. In August, 1984 employees who were not represented by the Organization performed "office paneling" work at the Paoli car shop.

The Organization maintains that the disputed work should have been performed by job classification No. 1122, (carpenter-second class). According to the Organization, performance of the disputed office paneling work by employees outside of this classification constituted a violation of Section 101 (Union Recognition) of the Collective Bargaining Agreement.

The Authority contends that there was no violation of the Agreement, as "no one owns work" under the provisions of the Authority/Organization Contract. The Authority further asserts that it was entitled to assign the work as it did pursuant to its management functions, which are contained in Section 1003 of the contract.

Cited provisions of the parties contract state in part:

Article I - Section 101 - Union Recognition

(a) The Southeastern Pennsylvania Transportation Authority recognizes the Union as the exclusive collective bargaining representative for those employees on the Regional High Speed Lines who spend the predominant amount of their time performing job duties described in the following Job Classifications: Numbers 1202, 1222, 1241, 1253, 1262, 1263, 1274, 1101, 1111, 1121, 1122, 1132, 1161, and 1174.

(b) Work within the job classifications specified above and such job classifications may be combined, reclassified, eliminated or abolished by SEPTA, provided that such work and/or classifications shall not be transferred to the application of the Rules of another SEPTA Collective Bargaining Agreement or non-agreement employee, except as provided in subparagraph (c) below.

(c) Work covered by this Union Recognition clause which is now or hereafter incident to and directly attached to the primary duties of an employee not covered by this Agreement may be performed by such other employee, provided the performance of such work does not involve the preponderance of the duties of such other employee.

Article 10 - Section 1003 - Management Functions

All management functions and responsibilities which SEPTA has not expressly modified or restricted by a specific provision of this Agreement are retained and vested exclusively in SEPTA, including, but not limited to, the right to ...direct the work force...to determine the number of employees and the duties to be performed...to determine staffing patterns in areas worked...to determine the assignment of work, the qualifications required, and the size and composition of the work force.

The Board has determined that the claim must be sustained in its entirety.

The Board rejects the Authority's argument that "no one owns work" and that the Authority is therefore privileged to make work assignments as it sees fit. The total discretion here claimed by the Authority is not contained in Section 1003 of the Labor Agreement, as this "Management's Functions" provision sets forth management rights only so far as they have not been "expressly modified or restricted by a specific provision of this agreement."

Section 101 of the Agreement (Union Recognition) clearly and expressly restricts management's right to assign work at its discretion. In Section 101(a) the Authority recognizes the Union as the "exclusive collective bargaining representative for those employees on the Regional High Speed Lines who spend the predominant amount of their time performing job duties described"

in certain job classifications, including that of carpenter-second class. Section 101(b) states that the Authority may not transfer work performed within the job classifications set forth in (a) to non-bargaining unit employees except under conditions set forth in Section 101 (c). Section 101(c) provides that employees not represented by the Organization may perform work covered by the Union Recognition Clause where (1) the work is "incident to"; and (2) "directly attached to the primary duties" of another employee; (3) "provided the performance of such work does not involve the preponderance of the duties of such other employee". Thus, by clear implication, unless the three conditions set forth in Section 101(c) are met, the Authority may not permit work within the job classifications set forth in (a) to be performed by employees not represented by the Organization.

Applying the Board's interpretation of Section 101 to the facts of this case, it is apparent that the Authority violated the Agreement. Office paneling at the Paoli car shop was work falling within the scope of Classification 1122, carpenter-second class, one of the classifications set forth in Section 101(a). Furthermore, the record evidence does not establish that the three conditions of Section 101(c), which would allow for proper transfer of the work, were met. Accordingly, a violation of Section 101 occurred when Claimants were not afforded an opportunity to perform the disputed office paneling work.

Concerning remedy, the Carrier argues that as the original grievance sought only "that the work be stopped" the

Organization's subsequent request for compensation is without merit. The Board rejects this contention by the Authority. The grievance clearly states that "we should do the work". It is implicit in this statement of the grievance that the Claimants be reimbursed for the work they were improperly denied.

AWARD

Claim sustained. Monies owed shall be paid within 30 days of the date of this Award.

R. B. Birnbrauer 10/2/88
R. B. BIRNBRAUER
Authority Member

W. E. La Rue
W. E. LA RUE
Organization Member

S. E. Buchheit
S. E. BUCHHEIT
Neutral Member