

SPECIAL BOARD OF ADJUSTMENT No. 957

AWARD No. 3

CASE No. 3

GRIEVANCE 84-9-F12

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
(BMWE)

and

Southeastern Pennsylvania Transportation
Authority (SEPTA)

STATEMENT OF CLAIM:

Claim of the Brotherhood that:

(a) The Carrier violated the current Collective Bargaining Agreement, specifically Rule 1004 - Contracting, when contracting to Amtrak and sub-contracting the replacement of rails and ties on Jenkintown Branch between Jenkintown and Wayne and continuing to CP 16th Street in Philadelphia, Pennsylvania. The Carrier did not notify the Brotherhood of such contracting, which began on July 5, 1984, and continuing until December 14, 1984, nor did they request a conference.

(b) The Carrier again violated the current Collective Bargaining Agreement, specifically Rule 1004 - Contracting, when contracting out the installation of 23,000 ties on the Norristown Line to Marta, without notification or conference with the Brotherhood. This contracting work also began on July 5, 1984, up to and including August 10, 1984.

REMEDY

The names of the Claimants attached shall now be compensated at their appropriate rate of pay, in addition to their regular pay, for each hour and each day the Carrier violated Section 1004, until such time as this violation discontinues or such work is performed by the SEPTA Brotherhood employees."

OPINION OF BOARD:

The origin of this dispute lies in two contracts SEPTA let out in July 1984 for the replacement of rails and ties in the Philadelphia area and for the installation of 23,000 ties in another area it services.

Section 1004 Contracting Out of the May 13, 1983 Agreement between the Parties is as follows:

"Except in emergencies, employees will perform normal and routine maintenance. SEPTA shall give favorable consideration to having certain repair work performed by its employees instead of being contracted out, provided the work is performed with existing facilities, without adding employees, and that the cost of such work is competitive with outside manufacturers as to the quality, price, and time of performance, and will not conflict with the performance of normal maintenance. It is not the intention of SEPTA to contract out solely for the purpose of reducing the workforce.

The Authority and the Union will completely discuss and investigate the contracting out before the contract is let.

The decision with respect to the contracting out of any particular work shall remain solely that of SEPTA.

This provision is subject to the grievance procedure."

The record establishes that the outside contractors employed some 175 employees on these two jobs. The record further establishes that SEPTA's track work complement numbered 110 employees. Given the size of the projects (e.g., 23,000 ties in one installation), the size of the SEPTA work force which experienced no work reduction or layoff during the period the contractors were at work, and the provisions of Section 1004 ("...providing the work is performed...without adding employees...", and "The decision with respect to the contracting out of any particular work shall remain solely that of SEPTA"), the conclusion is that the Carrier could contract out this work without violating the Agreement.

However, Section 1004 also provides that "The Authority and the Union will completely discuss and investigate the contracting out before the contract is let." During the progress of the claim on the property R.B. Birnbauer, Deputy Chief Industrial Relations Officer wrote to General Chairman Leonard W. Allen on August 17, 1984:

"This grievance protests two contracts which were contracted out without prior discussion with the Union. The Union also requested compensation for each track employe as long as contractors were on the property.

Investigation reveals that the Authority did fail to discuss the contracts to be let with the Union. At the second step Mr. Palmer assured the Union that steps had been taken so that in future contracting out the Union would be properly notified and discussions would take place if they desire..

Investigation reveals that although the matter was not discussed with the Union, the Authority did contract out the work in accordance with the Labor Agreement. The Authority does not pay for work not performed."

Mr. Allen's reply on August 20, 1984 addressed to Chief Industrial Relations Officer F.X. Hutchinson brought the Union's position into sharp focus:

"In your reply, you have admitted the Carrier's culpability in neglecting to notify the Brotherhood of Maintenance of Way Employees of the Carrier's intent to permit outside contractors perform work in our jurisdiction, as set forth in Section 1004 in our current working agreement. Yet the Carrier will not pay the affected employees on the premise that SEPTA does not pay for work not performed.

Mr. Hutchinson, we are not asking for compensation for services performed; rather, we desire compensation of a violation which Mr. Birnbauer concedes took place.

On this basis, we feel that the men of the facility track department are entitled to the pay for violation of Contract."

Clearly there has been a violation to the extent that the provision of the Agreement which requires notification to and discussion with the Union before contracting out was not followed. The Board is cognizant of the importance of such a provision for it permits the Union to come up with proposals which could conceivably result in some instances in the retention of the work in house. The Board is also aware that SEPTA's obligation under this part of Section 1004 is limited to that of discussion and investigation , and that given the size of the projects, the available manpower, and the contractual provisions as aforesaid, there is nothing in this record to support an inference that contracting out would not have occurred in any event.

The conclusion is that the violation was a technical one for which no remedy is appropriate with respect to the instant claim. (The Awards cited by the Union are not apposite). SEPTA asserts that the "oversight" occurred before full contractual procedures were set up, and that since then the contractual requirements have been followed. This assertion is accepted with respect to this claim. However, SEPTA is herewith made aware that all contractual obligations must be followed lest the integrity of the Agreement be compromised.

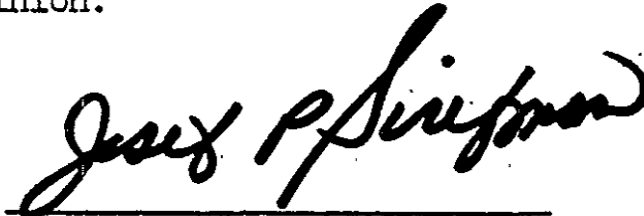
FINDINGS:

Special Board of Adjustment No. 957, upon the record as a whole, finds and holds as follows:

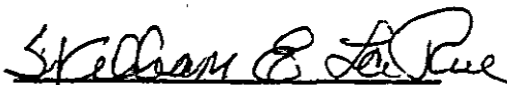
1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. That the Board has jurisdiction over the dispute herein;
3. That the Agreement was violated to the extent set forth in the Opinion.

AWARD

The Claim is sustained to the extent set forth in the Opinion.



Josef P. Sirefman
Chairman



William LaRue
Employee Member



Frank X. Hutchinson
Carrier Member

Dated: January 24, 1985