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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of)
)
BYERS-WHITE CORPORATION dba)
GAVILAN CHRYSYLER-PLYMOUTH-DODGE,) Protest No. PR-150-77
)
Protestant,)
)
vs.)
)
CHRYSYLER CORPORATION,) Filed: July 21, 1978
)
Respondent.)
)

DECISION

Procedural Background

1. Protestant, Byers-White Corporation, dba Gavilan Chrysler-Plymouth-Dodge ("Gavilan"), a franchisee of respondent Chrysler Corporation ("Chrysler") submitted and was paid on warranty service and transportation damage claims.

2. Commencing May 2, 1977, Chrysler conducted an audit of Gavilan's warranty claims submitted during the period May 1, 1976, to April 30, 1977. As a result of this audit Chrysler disapproved warranty repair claims and transportation repair claims in the amount of \$105,221.36. This amount was charged back to Gavilan.

3. On November 7, 1977, Gavilan filed a protest with the New Motor Vehicle Board ("Board") contending that Chrysler violated Vehicle Code Section 3065^{1/} in disapproving the above warranty and transportation repair claims.

4. A hearing was held pursuant to Section 3066 before Gloriette C. Fong, Hearing Officer of the New Motor Vehicle Board in San Francisco, California, on December 14, 15, and 16, 1977. The hearing was continued to, and concluded on, February 23, 1978.

5. The protestant was represented by Ernest S. Pierucci of Wright, Britton, Coder and Tuel. The respondent was represented by Franklin H. Wilson of McCutchen, Black, Verleger and Shea.

Issues Presented

6. Gavilan contends that the chargeback is in violation of Section 3065(d) in that Gavilan:

(a) Did not receive disapproval of any of the claims within 30 days of Chrysler's receipt of the claims;

(b) Did not receive notification of the specific grounds of the disapproval within 30 days of Chrysler receiving those claims; and

(c) Completed work and labor and provided materials as stated in submitted warranty and transportation claims for the audit period.

1. All references are to the Vehicle Code.

7. Gavilan contends that Chrysler's Paint Application to Labor Operation Chart, ("Chart") used to compute chargebacks of warranty reimbursement claims is unreasonable. (§3065(a).)

Findings of Fact

Findings Related to Warranty Claim Disapproval
(§3065(d))

8. As a result of the Chrysler audit, Gavilan repair claims were disapproved more than 30 days after receipt by the franchisor.

9. Under the Direct Dealer Agreement, Chrysler agrees to reimburse Gavilan for parts, materials, and labor time necessary for warranty service. Gavilan agrees to comply with the policies and procedures set out in the Warranty Policy and Procedure Manuals, bulletins, and documents relating to warranty service.

10. An express condition of receiving reimbursement from Chrysler is that Gavilan support by documentary evidence and records that service was actually performed and parts (including paint) were actually used.

11. Gavilan must submit a Transportation Claim ("TCR") for its repair of damage caused during transit from the Chrysler factory. For repairs of defectively manufactured vehicles Gavilan must submit a Warranty Repair Order ("WRO").

12. Gavilan itemizes the labor operations required to service a vehicle by placing on the TCR and WRO the number assigned by Chrysler to such operation as found in the Warranty Operation Time Schedule ("WOTS"):

(a) The labor operation number defines the panel or section of a panel of the vehicle being serviced;^{2/}

(b) For each labor operation number, Chrysler assigns a fixed amount of time in which to perform the operation. That fixed time is then multiplied by the warranty labor hourly rate assigned to Gavilan by Chrysler.

(c) Paint labor allowance does not include paint mix time, which is an additional allowance.

(d) "NN" (no number) operations are those which have no time allowance set by Chrysler and actual time required by Gavilan for the repair is claimed.

(e) For each operation number Chrysler gives a material allowance for mixed material, paint, primer--surfacers sandpaper, masking tape, and paper, rags, tack rags, and compounds. This is increased by 25% to provide for Gavilan's overhead and dealer profit.

13. Chrysler's procedure for making tentative warranty payments with subsequent chargebacks is described in Section III C of the Warranty Policy and Procedure Manual. Chrysler pays all warranty claims subject to its right to inspect and audit Gavilan's documentary evidence for the purpose of verifying those claims. When the audit reveals the records do not support the claims, Gavilan is charged back the unsupported amount of the tentative payment.

2. Panels are side panels, inner doors, fenders, doors, roofs, hoods, wheel openings, cowls and A posts. The following panels have sections: side panels, inner doors, fenders and doors.

Findings Related to Performance of Warranty Repairs

14. Gavilan repairs transportation damage and performs warranty work on units in transit from Chrysler's factory to a recreational coach builder, American Clipper. The warranty servicing of the Dodge cutaway vans, Models MB 300 and MB 400, are in dispute.

15. White was the only color of body paint used in servicing all the above vehicles. Dashboard and grill paint was used in various colors.

16. A spot repair involves less than 25% of a section. Spot repairs can be color coated, which does not require working on the prime coat; or refinished, which requires work on the prime coat and underlying metal surface.

17. The materials allowance is greater for refinishing than it is for color coating on any given repair, although the quantity of paint allowed is the same.

18. During the audit year color coating at Gavilan decreased while refinishing increased.

19. The vehicle inspection report section of a TCR indicates the type and length of damage in any panel. The damage is acknowledged by the signature of the transportation company when it delivers the vehicle to the dealership.

20. The Warranty Policy and Procedure Manual recommends repainting of sections rather than a complete panel when possible. Nothing in Chrysler's manuals require that sections of panels be designated in noting damage. It would be difficult to determine whether color-coating or refinishing would be needed or whether a spot or section repair would be

required by examining a claim. However, Chrysler claimed they could make this determination by reviewing legible TCR's.

21. Whenever more than one section of a panel requires paint repair, Gavilan is instructed by Chrysler to use the allowances for the entire panel.

2. Findings Relating to the Audit

22. A member of Chrysler's field audit staff, John C. Tassia, went to the Gavilan dealership on May 2 and commenced a review and inspection of Gavilan's books and records. At the outset, Mr. Tassia briefly reviewed the WRO's and TCR's in the dealership files and questioned various employees about certain of the record keeping procedures of the dealership.

23. Mr. Tassia also examined the ledger and various journals of the dealership and noted that Account 136B in the general ledger showed a credit balance rather than a debit balance, a most unusual condition which means there is a negative inventory in that account.

24. Account 136B records the purchases (debits) of body shop paint and materials and the use of the paint and materials (credits). When paint and materials are purchased, a debit is posted in the account. Offsetting credits are therefore posted as paint and materials are used in the bodyshop bringing the account back towards a zero balance until more paint and materials are purchased and additional debits posted to the account. The account should always have a debit balance which means there is a positive inventory of paint and materials.

25. Mr. Tassia noticed that Gavilan's Account 136B instead of showing a debit balance had a credit balance of \$3,613.73 as of April 30, 1977. According to the general ledger, it had had a debit balance of \$208.57 one year earlier on April 30, 1976. On further examination of Account 136B, Mr. Tassia noted that two adjustments reducing the credit balance had been made in the account, one for \$1,000.00 in November, 1976 and a second for \$1,460.14 on April 30, 1977. Mr. Tassia asked the office manager for the explanation for these substantial adjustments and was told that the only reason for them was to reduce the credit balance and that the office manager had wanted to get the account back closer to a debit balance. Adding the two adjustments, for which there was no satisfactory explanation, back into the account raised the credit balance to \$6,073.87.

26. Mr. Tassia went through all the accounts payable files and identified the vendors and the purchase orders for all paint and materials that should have been posted to Account 136B. Mr. Tassia determined that all of the purchases of paint and materials had properly been debited to Account 136B and that the credit balance could not be explained simply by a failure to debit purchases of paint and materials as they were made.

27. Mr. Tassia then decided to do a detailed review of the paint availability to the dealership and the amount of paint claimed to have been used as shown on the WRO's and TCR's.

28. Mr. Tassia proceeded to review the dealership copies of each WRO and TCR, a total of approximately 6,900 such claims, and scheduled out over 3,000 such claims that listed paint repairs.

29. In addition to the improbable negative inventory in Account 136B, during the course of the review of Gavilan's books and records, Chrysler's auditors noted that there had been a trend toward increasing the proportion of more expensive repairs, such as refinishing of entire panels, while the less expensive repairs, such as color coating a single section of a panel or a spot repair, had declined except during the period when a Chrysler Service Development Manager had been present at the dealership for about five weeks in January and February 1977.

30. Gavilan was informed in January 1977 that a Chrysler Service Development Manager (SDM) would be working at the dealership commencing January 24, 1977. The SDM was at Gavilan five weeks and examined vehicles and authorized work to be performed pursuant to WRO claims. (The SDM did not examine any work being done pursuant to TCR's).

31. The SDM disapproved and scaled down operations on approximately 70 WRO's during his stay at Gavilan. Complete panel repairs were reduced to section repairs and refinishing repairs were reduced to color coating repairs. Approximately half these WRO's were later signed by the SDM upon his review following the repair work.

32. The total number and dollar value of WRO's decreased while the Chrysler SDM was at Gavilan, although there was no shortage of vans to service since there was a large delivery in January (see chart on next page).

<u>Date</u>	<u>Vans Delivered</u>	<u>Total WRO's</u>	<u>Total Dollar WRO Claims</u>
11/76	294	525	\$12,553.00
12/76	169	673	\$23,450.00
1/77	248	550	\$16,564.00 *
2/77	148	620	\$19,562.00 *
3/77	130	993	\$37,200.00

* Chrysler's SDM present at Gavilan

33. In addition to fewer total WRO's when Chrysler's SDM was present, the less expensive color coating operations increased in number, while the more expensive refinishing operations decreased by approximately 120 operations; section repairs stayed about the same while the more expensive panel repairs dropped off by about 250 operations.

34. The auditors notice in reviewing the vehicle inspection report section of the TCR's that many of them listed small scratches or chips in the paint, usually one or at the most two inches. However, the claimed paint repair listing the WOTS code number was the refinishing of the entire panel on which the scratch or chip was located. Mr. Tassia testified that the small chips or scratches, if they required bodyshop paint work as distinguished from a touchup or rubout, should have had at most a spot repair.

35. By reviewing Account 136B and the purchase invoices of Gavilan, the auditors determined that Gavilan had available to it 935.55 pints of white body paint during the audit period.

After the audit was completed, Gavilan presented evidence to the auditors in July, 1977, that 40 pints of white paint had been given to Gavilan by American Clipper but were not recorded. Thus, a total of 975.55 pints of white body paint were available to Gavilan during the audit period.

36. Chrysler's Paint Application to Labor Operations Chart ("Chart") sets out what Chrysler has determined to be the minimum quantity of paint for each repair operation to obtain acceptable appearance and durability. The minimum amounts of paint listed on the Chart assume that the painter is a skilled painter, working under good conditions and with a minimum paint wastage.

37. The nature of painting repairs makes it extremely difficult to set rigid specifications as to the exact quantity of paint required to perform a paint operation. The goal of any paint operation, it was agreed by all witnesses, is to achieve acceptable standards of appearance and durability. The amount of paint that any painter may need to use to achieve the standard of acceptable appearance and durability varies based on the expertise of the painter, the application techniques utilized, possible waste factors, curvature, location, and size of the areas to be repainted.

38. If two or more contiguous sections or panels are painted at the same time, then less paint is used per section or panel than if the sections or panel were painted individually.

39. For every charge to Chrysler by Gavilan for an entire panel operation on a sectioned panel, door, side panel, or fender, Chrysler's auditor added into the total amount of paint the Chart indicated as needed to actually paint the entire panel. The procedure inflated the minimum number of pints of paint required to justify the audited charges.

40. Chrysler's National Body and Paint Instructor had not seen the Chart until the day before the hearing; had not reviewed any documents or studies to prepare for his testimony; had never conducted a personal study as to how much paint is required to paint an MB-300; he did not know if the quantities stated in the Chart were the same as those produced by the research of Chrysler's time-study department.

41. The Marketing Representative of Sherwin Williams Paint Company who sold the white paint to Gavilan testified that Chrysler's Chart was 40-50% too high.

Findings Relating to Audit Results

42. During the audit period Chrysler paid Gavilan \$123,393.82 for warranty and transportation claims involving the use of white body paint including labor and materials. The audit, using the Chart as the basis for determining the amount of white paint that would be needed for this volume of

work, showed Gavilan would have needed 3,513.15 pints of paint to perform the work claimed. Gavilan could show only 975.55 pints available.

43. During the audit period Chrysler paid Gavilan \$12,167.07 for warranty and transportation claims involving the use of dash paint. The audit showed Gavilan would have needed 149.85 pints of paint to perform the work claimed. Gavilan could only show 16 pints available.

44. During the audit period Chrysler paid Gavilan \$3,737.55 for warranty and transportation claims involving the use of grill paint. The audit showed Gavilan would have needed 39.05 pints of paint to perform the work claimed. Gavilan could only show 17 pints available.

45. Chrysler then divided the total pints of paints it computed to be necessary for the operations claimed into the dollar amount it paid for the repair operations claimed by Gavilan, obtaining what Chrysler claimed to be its reimbursement cost per pint of paint. Such costs included labor, NN time, and materials.

(a) For white body paint Chrysler divided \$123,393.82 paid, by 3,513.15 pints needed, to obtain \$35.12 per pint. Multiplying \$35.12 by 2,537.60 pints available paint, Chrysler claimed a chargeback of \$89,120.51 for white body paint.

(b) For dash paint Chrysler divided \$12,167.07 paid, by 149.85 pints needed, to obtain \$81.19 per pint. Multiplying \$81.19 by 133.85 pints of unavailable paint, Chrysler claimed a chargeback of \$10,867.95 for dash paint.

(c) For grill paint Chrysler divided \$3,737.55 paid, by 39.05 pints needed, to obtain \$95.71 per pint. Multiplying \$95.71 by 22.05 pints of unavailable paint, Chrysler claimed a chargeback of \$2,110.41.

46. The total of chargebacks for white body paint, dash and grill paint is \$102,098.87. The chargeback included amounts paid on paints and materials, labor, paint mix allowance, and NN time.

47. There was an additional charge of \$3,122.49, bringing the total chargeback to \$105,221.36.

48. Chrysler admits that its audit system is nonspecific in that it cannot determine which warranty service claims are valid.

49. The audit system is not intended to determine what work the dealer actually did and what the proper compensation for the work should be.

50. For each category of paint the total amount of charges was divided by the minimum amount of paint Chrysler determined was necessary to justify the charges and the amount of paint Gavilan had available to it. The product of this multiplication operation was the amount of the chargeback for each category.

51. The accuracy of the audit is dependent, inter alia, on the accuracy of the Chart and the reasonableness of the method by which it was applied to the charges for entire sectioned panels.

52. The audit included charges for metal repair

operations (NN time). Chrysler's auditor did not know how much of the audited charges were for metal repairs.

53. There is no constant relationship between metal work performed and the paint operation occasioned by the damage being repaired. The same metal damage can require many different paint operations depending upon its location on the vehicle.

Determination of Issues

1. Vehicle Code Section 3065(d) does not bar subsequent adjustments of warranty reimbursements by the franchisor made in a timely manner^{4/}.

2. There is insufficient evidence to determine whether Gavilan properly performed all work subject to this protest.

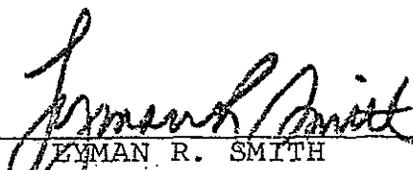
3. Chrysler's audit was based upon its Paint Application to Labor Operations Chart and the amount of paint available (on hand) to Gavilan. This method of determining the amount of chargeback (if any) to which Chrysler is entitled is unreasonable.

* * * * *

WHEREFORE, THE FOLLOWING ORDER IS HEREBY MADE:

The protest is sustained.

Dated: July 17th 1978.


LYMAN R. SMITH
Public Member
New Motor Vehicle Board

4. Putnam Dodge, Inc., vs. Chrysler Corporation and Chrysler Motor Corporation, Protest No. PR-92-76.