

53. The 1979 edition of the Warranty and Policy Manual required all operations, both flat-rate and measured time, to be time recorded by all dealers. This time recording procedure was amended in February 1980 and continued through the 1982 manual. The amendment required that only measured time operations of warranty/policy repairs be time recorded by all dealers. Recording of flat-rate repairs was only required of dealerships selected by Ford as needing improvement in their warranty administration. The 1982 manual was applicable to the time period reviewed by the audit.

54. Ford's purpose for the time recording procedures is, as stated in the Warranty and Policy Manual, "a labor control requirement only". The manual further states:

These procedures do not alter the reimbursement provisions of this Manual as they apply to standard operations; that is the standard operations will be reimbursed provided the time recorded supporting them is fair and realistic.

55. Ford further justifies the time recording requirement as a basis for establishing credibility that the work claimed by the dealership was performed.

56. As previously stated Ford selected Hensley-Anderson as a dealership required to time record all repairs beginning in February 1980 and extending through the period audited.

57. Upon being so instructed by Raynor, both the service department and body shop of Hensley-Anderson began what they believed to be correct time clocking procedures. After time clocking was initiated, a meeting was held including Donald Burton, Service Manager, Fred Sands, Body Shop Manager, and Ford's Service Zone Manager, David Bressman. As a result of the meeting the body shop personnel stopped time clocking. Although denied by Bressman, both Burton and Sands believed in good faith that Bressman had released the body shop from the time clocking requirements due to the complexity involved.

58. Bressman's duties as a Service Zone Manager included visiting each of his assigned dealerships approximately every eight working days, reviewing warranty claims and claims requiring prior approval, and assisting in warranty studies.

59. Bressman had been the Zone Service Manager for Hensley-Anderson for approximately nine (9) years including the time period audited. During this time Bressman reviewed numerous claims requiring prior approval. Bressman was aware some of these claims contained improper time recording. Bressman never discussed the proper time recording procedure with Hensley-Anderson. Bressman did not feel it was his responsibility to verify or explain time clocking with Hensley-Anderson since the procedure was explained in the Warranty and Policy Manual.

60. After the letter requiring time clocking was received by Hensley-Anderson, Bressman discussed the letter with Raynor. Bressman was aware that Hensley-Anderson had initiated time clocking of all warranty repairs in accordance with Ford's instructions. In reviewing warranty repairs which, pursuant to the manual, required Bressman's approval prior to submission for payment, Bressman realized that some of the claims were not properly time recorded. Despite being aware of the impropriety, Bressman authorized the submission of the claims because he knew that the work claimed had been performed and that he did not choose to be the "bad guy" preventing reimbursement for the performed work.

61. As previously indicated, the auditor refused to consider whether the work was performed. The audit was conducted at the dealership with full access to both dealer records and personnel to substantiate whether the work was done or not.

62. Vehicle Code Section 3065(a) states in part:

Every franchisor shall properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to fulfill such warranty when the franchisee has fulfilled warranty obligations of repair and servicing . . . (emphasis added).

CONCLUSION

63. Although failure to follow the requirements of the Warranty and Policy Manual may establish a prime facie basis for an audit chargeback, it is unreasonable for Ford to issue such a chargeback when it is shown that the warranty repairs have in fact been completed.

3. WHETHER HENSLEY-ANDERSON PERFORMED THE WORK
INDICATED ON THE CLAIMS DISALLOWED.

FINDINGS:

64. The majority of chargebacks made were for lack of proper time recording. Other categories of chargebacks were repeat repairs, add-ons, wrong diagnosis and replacement of non-defective parts.

65. The majority of the time clocking chargebacks involved flat-rate repairs. These repairs have a standard time assigned by Ford. The dealership is paid that amount regardless of how long the mechanic worked on the job. All of the chargebacks from the body shop were due to unsubstantiated time.

66. The daily business procedures of both the body shop and the service department along with the testimony of Sands, Burton and Mari Moorehead, Sands assistant, establish that the work on the flat-rate repairs was completed. The extensive daily procedure, including internal processing of claims, and the daily repair order recap used by Hensley-Anderson in the regular course of the business provided effective checks on both the mechanics and service personnel.

67. The procedure used by the service department for all warranty repair work completed during the period of June 1982 through June 1983 (the audited period) is detailed below:

- . The ticket is written up by the service advisor.
- . It is then turned into the dispatch booth.
- . The ticket is torn apart and the dispatcher retains the hard copy.
- . The soft copies are turned in to the parts department.
- . The dispatcher then gives the work to the mechanic and the ticket is punched on.
- . When the mechanic turns in the ticket it is punched off.
- . The ticket is turned in to the parts department along with the parts used. The parts man initials the ticket to indicate he received the parts. He then tags the ticket with a repair order number and dates it.
- . The hard copy and white copy go to the service manager. He writes in the labor prices and the operation numbers, returns them to the cashier to be closed out and the cashier turns them in to the main office for posting and filing.

68. A daily repair recap was also kept by the service department in the regular course of business listing all jobs including vehicle, work done, mechanic on the job and the date.

69. The same procedures were followed in the body shop. Sands and Moorehead inspected all jobs to make sure the work was completed. A daily repair recap was also maintained in the regular course of business. This was prepared by Sands or his assistant. The employees in the body shop were not allowed to enter any information on the chart.

70. Hensley-Anderson used the same internal procedures for all warranty claims including those charged back for improper time clocking or for other reasons.

71. A chargeback was made by Ford due to improper diagnosis involving a replacement of a defective part. The defective part was submitted to Ford. Ford disallowed the claim but did not return the part.

Section 3065(c) requires that:

(c) If any franchisor disallows a franchisee's claim for a defective part, alleging that such part, in fact, is not defective, the franchisor shall return such part so alleged not to be defective to the franchisee at the expense of the franchisor, or the franchisee shall be reimbursed for the franchisee's cost of the part, at the franchisor's option.

Ford did not comply with Section 3065(c) in regard to the allegedly non-defective part.

72. All the claims charged back for reasons of misdiagnosis involved completed work. The initial work was done either under Ford's policy to attempt to repair before replacing the part or pursuant to instructions from Ford.

73. Two repairs were included in the chargeback because they were completed by Hensley-Anderson in what Ford terms an impossibly short time. These were flat rate repairs. Both repairs were completed and Hensley-Anderson charged the flat-rate time permitted by Ford.

CONCLUSION

74. There was no evidence that there was any lack of good faith on the part of Hensley-Anderson in performing the work or in attempting to comply with Ford's manual.

75. The evidence that the work was done was uncontroverted by Ford. As previously stated, the chargeback was made by Ford without regard to whether the dealership had in fact performed the warranty obligations of Ford.

76. Hensley-Anderson did perform the work on the disallowed claims.

4. WHETHER FORD SHOULD PAY FOR WORK PERFORMED IN FULFILLING FORD'S WARRANTY OBLIGATIONS DESPITE TECHNICAL VIOLATIONS OF FORD'S WARRANTY AND POLICY MANUAL.

FINDINGS:

77. Vehicle Code Section 3065(a) provides:

Every franchisor shall properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to fulfill such warranty when the franchisee has fulfilled warranty obligations of repair and servicing . . . (emphasis added)

78. Hensley-Anderson has shown that they in good faith completed the majority of the repairs charged back. Labor and parts of Hensley-Anderson have been expended on these repairs and under Section 3065 Ford "shall adequately and fairly compensate" (emphasis added) Hensley-Anderson for the work done.

CONCLUSION

79. To allow Ford to avoid paying for work actually performed by Hensley-Anderson in fulfilling Ford's warranty obligations would result in forfeiture by Hensley-Anderson and unjust enrichment of Ford.

80. Ford was unreasonable in charging back for work actually performed. Hensley-Anderson is entitled to compensation for the work performed in fulfilling Ford's warranty obligations.

C. WHETHER FORD VIOLATED SECTION 3065(d) IN NOT DISAPPROVING WITHIN 30 DAYS OF PRESENTATION ANY OF THE CLAIMS PAID DURING THE TWELVE (12) MONTH PERIOD ENDING JUNE 1983 WHICH WERE SUBSEQUENTLY CHARGED BACK AS A RESULT OF THE 1983 AUDIT.

FINDINGS:

81. Hensley-Anderson is not alleging that when the warranty claims were first submitted to Ford, that Ford failed to disapprove the claims within 30 days of presentation. Hensley-Anderson is referring to the chargebacks resulting from the audit which occurred more than 30 days after the initial presentation.

CONCLUSION

82. It has been established that Ford does have the right to chargeback for violations of the warranty and policy manual. Ford does not violate Section 3065(d) by subsequent chargebacks in an audit. Section 3065(d) pertains only to the initial presentation of claims to a franchisor and is not applicable to the facts of this protest.

D. WHETHER FORD VIOLATED SECTION 3065(d) IN FAILING TO PROVIDE WRITTEN GROUNDS WITHIN 30 DAYS OF PRESENTATION FOR DISALLOWANCE OF CLAIMS PAID DURING THE TWELVE (12) MONTH PERIOD ENDING JUNE 1983 WHICH WERE SUBSEQUENTLY CHARGED BACK AS A RESULT OF THE 1983 AUDITS.

CONCLUSION

83. Section 3065(d) pertains only to the initial presentation of claims in the warranty process. Ford has the right to chargeback claims from an audit of a dealership when appropriate. Ford has not violated Section 3065(d).

DETERMINATION OF THE ISSUES

84. The Ford Sales and Service Agreement provides for a right to chargeback for violation of the Warranty and Policy Manual.

85. Ford's actions in reviewing Hensley-Anderson's warranty claims and in conducting an audit were not unreasonable, arbitrary or capricious.

86. Ford's warranty audit procedures were not unreasonable, arbitrary or capricious nor applied in an unreasonable or discriminatory manner in regard to the sampling or in regard to whether Hensley-Anderson had complied with Ford's required procedures.

87. Ford's admitted failure to follow its own standard warranty audit program was unreasonable.

88. Although failure to follow the requirements of the Warranty and Policy Manual may establish a prima facie basis for an audit chargeback, it is unreasonable for Ford to issue such a chargeback when it is shown that the warranty repairs have in fact been completed.

89. There was no evidence that there was any lack of good faith on the part of Hensley-Anderson in performing the work or in attempting to comply with Ford's manual.

90. The evidence that the work was done was uncontroverted by Ford. As previously stated, the chargeback was made by Ford without regard to whether the dealership had in fact performed the warranty obligations of Ford.

91. Hensley-Anderson has shown that it performed the work indicated on the claims disallowed. Labor and parts of Hensley-Anderson have been expended on these repairs and under Section 3065 Ford is required to "adequately and fairly compensate" Hensley-Anderson for the work done.

92. To allow Ford to avoid paying for work actually performed by Hensley-Anderson in fulfilling Ford's warranty obligations would result in forfeiture by Hensley-Anderson and unjust enrichment of Ford.

93. Ford was unreasonable in charging back for work actually performed. Hensley-Anderson is entitled to compensation for the work performed in fulfilling Ford's warranty obligations.

94. The thirty (30) day time limit for approval or disapproval of warranty claims in Section 3065(d) does not apply to subsequent chargebacks as a result of a dealership audit by a franchisor.

95. The following chargebacks are improper in that the work had been performed and parts supplied by Hensley-Anderson in fulfilling Ford's warranty obligations:

Flat Rate Repairs

Ford's justification for chargebacks in this category was improper time recording of the claims.

Amount of Chargeback

<u>Claim No.</u>	<u>Parts</u>	<u>Labor</u>
012617		123.00
012959	12.00	6.00
012988		66.00
014429		333.00
044274		150.00
044654		231.00
012623		18.00
012690		51.00
012795		15.00
013414		12.00
013824		72.00
044102	24.60	69.00
014142		18.00
014148		93.00
043985		216.00

<u>Claim No.</u>	<u>Parts</u>	<u>Labor</u>
044659		69.00
012816	15.00	15.00
012948		12.00
013101		9.00
013126		51.00
013129		36.00
013546		24.00
044324		18.00
044472		96.00
012932		24.62
044632		24.00
012794		6.00
012878	15.00	9.00
014500	9.00	9.00
044733		255.00
012620	95.06	9.00
012884		60.00
012942		54.00
013405		273.00
044621		21.00
014156		63.00
013103	25.79	15.00
013194		9.00
013183		9.00

Combination Flat Rate
and Measured Time Repairs

Ford's justification for the chargeback in this category was improper time recording of the claims.

Amount of Chargeback

<u>Claim No.</u>	<u>Parts</u>	<u>Labor</u>
044887	15.00	9.00

Flat Rate Body Shop Repairs

Ford's justification for chargebacks in this category was failure to time record the claims.

Amount of Chargeback

<u>Claim No.</u>	<u>Parts</u>	<u>Labor</u>
012622		42.00
013498		42.00
012577		51.00
044162		48.00

<u>Claim No.</u>	<u>Parts</u>	<u>Labor</u>
013057		24.00
044335		30.00
044513		33.00
012980		63.00
012982		45.00
012845		60.00
013222		84.00

Measured Time Repairs

Ford's justification for chargebacks in this category was improper time recording of the claims.

Amount of Chargeback

<u>Claim No.</u>	<u>Parts</u>	<u>Labor</u>
012912		18.00
013940		12.00
013577		15.00
014376		60.00
043985		216.00
014121		36.00
012567		9.00

<u>Claim No.</u>	<u>Parts</u>	<u>Labor</u>
044704		9.00
012676		18.00
013068		15.00
044521		126.00

Flat Rate Repairs

Ford's justification for chargebacks in this category was improper time recording of the claims.

Amount of Chargeback

<u>Claim No.</u>	<u>Parts</u>	<u>Labor</u>
044627		27.00
013594		75.00
012504		9.00
012695		63.00
044141		48.00
044448		21.00
012709		6.00
044428		90.00
013022		69.00

Flat Rate and Measured Time Repairs in Body Shop

Ford's justifications for chargebacks in this category include:

No Time Recordation

<u>Claim No.</u>	<u>Labor</u>
013939	45.00
044232	30.00

Improper Diagnosis

013103	40.79
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Misbuilt Unit

044277	18.53
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Misdiagnosis

044388	22.11
013209	72.38
013103	40.79
044739	285.23
044955	18.00

Impossibly Short Time

<u>Claim No.</u>	<u>Labor</u>
013057	24.00
044448	<u>21.00</u>
Total Specific Warranty	TOTAL <u>\$4,945.90</u>

Claims Improperly Charged Back
(Pages 36 thru 42 supra)

Disallowed Transportation Damage Claims

Ford's justification for chargebacks in this category was failure to time record the claims.

Amount of Chargeback

<u>Claim No.</u>	<u>Parts</u>	<u>Labor</u>
418951		7.00
418953		177.00
418959		30.00
418962		45.00
418963		30.00
418964		120.00

<u>Claim No.</u>	<u>Parts</u>	<u>Labor</u>
418965		60.00
861873		45.00
861874		30.00
861880		36.00
861881		60.00
861882		30.00
861885		78.00
861886		189.00
861887		30.00
861888		81.00
861897		39.00
861898		30.00
861899		<u>30.00</u>

Total Transportation Damage TOTAL \$1,227.00

Claims Improperly Charged Back

Because the sum of the specific warranty claims (\$4,945.90) is determined from the sample used during the audit, Ford must apply the formula it used in calculating the amount originally charged back to arrive at the total sum which Hensley-Anderson is now entitled to receive.

In addition to this sum, Hensley-Anderson shall also be entitled to receive \$1,227 of the transportation damage claims improperly charged back.

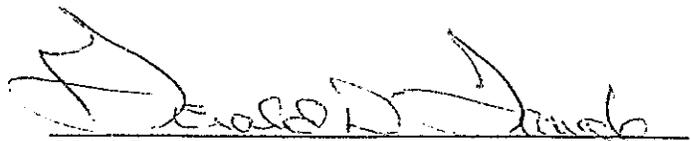
Ford shall comply with this order, and shall advise the Board of the details of its calculations and the sum to be paid to Hensley-Anderson within 30 days of the effective date of this order.

The following proposed decision is respectfully submitted:

The protest is sustained. Ford is ordered to comply with the decision.

I hereby submit the foregoing which constitutes my proposed decision in the above-entitled matter, as a result of a hearing had before me on the above dates and recommend its adoption as the decision of the New Motor Vehicle Board.

DATED: July 13, 1984


GERALD D. LANGLE
Administrative Law Judge
New Motor Vehicle Board