

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned outside forces to cut weeds in the vicinity of Olean, New York August 26 to September 2, 1983 (System Docket CR-539).

(2) As a consequence of the aforesaid violation, Machine Operator R. D. Battaglia shall be allowed forty-eight (48) hours of pay at the Class 2 machine operator's straight time rate."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

During the period August 26, 1983, through September 2, 1983, Carrier contracted with the Gra-Hill Company to perform brush cutting work in or near track in Olean, N.Y. As a result, the Organization filed the instant claim on or about October 5, 1983, seeking 48 hours' pay for Claimant. Carrier timely denied it. Thereafter, the dispute was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization contends that Carrier is required to give 15 days' notice when it intends to contract out work of this type. That requirement, it notes, is contained in the February 1, 1982 Agreement as well as a supporting letter between the parties dated December 11, 1981. Since 15 days notice was not given, the Organization argues that the claim must be sustained on this basis alone.

Carrier, on the other hand, submits that the March 16, 1977 Agreement is controlling here. That Agreement, it notes, permits it to contract out work provided it upgrades a number of Carrier employees equal to the number of

employees employed by the contractor to complete the job. That is precisely what occurred in this case, Carrier points out. Thus, it maintains it complied with all relevant Agreement rules. Therefore, Carrier asks that the claim be rejected in its entirety.


Central to the resolution of this dispute is which agreement(s) apply to the facts of this case. In a decision issued on May 13, 1987, the Board traced the history of negotiations between the parties and concluded that the March 16, 1977 Agreement did not survive the February 1, 1982 Agreement. (Third Division Award 26314.) The Board's reasoning is clearly applicable to this dispute. In addition, that Award dealt with facts virtually identical to those present here. Thus, consistent with the findings of Award 26314, and the time honored doctrine of stare decisis, we shall hold Carrier responsible for one-half of the liability in the instant claim.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of August 1988.