

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

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

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

(1) The Agreement was violated when outside forces were used to dismantle and remove a water tower at Harrisburg, Pennsylvania on April 11, 12, 13, 14, 15 and 18, 1983 (System Docket CR-310).

(2) The Agreement was further violated when the Carrier did not give the General Chairman prior written notification of its plan to assign said work to outside forces.

(3) Because of the aforesaid violations, B&B Mechanics G. Murlatt, M. S. Knuth, L. E. Seiler, Jr. and R. Cieszynski shall each be allowed forty-eight (48) hours of pay at their respective straight time rates."

FINDINGS:

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

The carrier or carriers and the employee 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 handling of the Claim on the property, the Carrier basically asserted that demolition work as at issue herein had been performed by contractors in the past without obtaining the Organization's approval. In this respect, the Organization, on the property, mainly relied upon its letter of August 20, 1984, addressed to the Carrier, which had attached to it another letter of August 20, 1984, that addressed a Claim concerned with the dismantling of a concrete road. (System Docket Number CR-311) The Carrier's letter of January 3, 1984, which it appears had denied case CR-311 was not a part of the record before this Board. Accordingly, while we understand and are not unappreciative of the contentions presented to this Board, we are constrained

to only consider those facts developed on the property. On that basis, in that a key assertion was not refuted in a substantive manner on the property, it stands as fact.

In summary, we have carefully reviewed the positions advanced by the parties on the property and conclude therefrom that the Organization has failed to sustain its burden necessary in matters such as here.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois this 27th day of October 1988.