

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29509
Docket No. MW-29177
93-3-90-3-25

The Third Division consisted of the regular members and in addition Referee John C. Fletcher 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 Agreement was violated when the Carrier assigned, or otherwise permitted, outside forces to perform track repair work on the PBS Mine track on October 22, 27 and November 3 and 4, 1988 (System Docket MW-220).

(2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intention to contract out said work.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Track Department employees R. T. Hollen, R. L. Lutsko, H. F. Boring and L. W. McGarvey shall each be allowed twenty-four (24) hours of pay 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.

Claimants are seeking four days pay each, account employees of a mining concern making repairs on tracks servicing the mine, on October 22 and 27 and November 3 and 4, 1988. Carrier argues that it had no knowledge that employees of the mining company undertook the repairs and that it did not authorize the work. However, in an effort to settle the matter it paid each of the Claimants one day's pay, which it argues cannot be considered as an admission against interest in this matter.

This record leaves little doubt that the work completed by the employees of the mining company on the dates in the Claim was work which would normally have been performed by Claimants. Carrier is not privileged to have strangers to the Agreement, in this case non-employees, enter upon its tracks and perform required repairs and then seek to be excused from payment of resulting claims on the basis that the work was unauthorized and/or that it was unaware that it was being completed. Such conduct would erode a basic premise that such work is reserved to employees within the Craft and could effectively nullify Agreement viability. In situations where Carrier is desirous of having outsiders perform repairs on its tracks it must resort to the procedures agreed upon for contracting out such work. A failure to do so cannot be excused on the basis that it was unauthorized and unknown.

The Claim will be sustained. Carrier may deduct amounts equal to payments made in its settlement offer.

A W A R D

Claim sustained in accordance with the Finding.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of February 1993.