

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29568
Docket No. MW-29253
93-3-90-3-128

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 outside forces (M. J. Pouquet, Inc.) to perform track dismantling, roadbed rebuilding and track rebuilding work at South Kearny Yard in South Kearny, New Jersey beginning on August 31, 1988 and continuing (System Docket MW-231).

(2) The Agreement was further violated when the Carrier failed to properly and timely notify and confer with the General Chairman concerning its intention to contract out said work as required by the Scope Rule.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Foreman C. Nixon, Class 2 Machine Operators J. F. DaCosta, T. M. DaCosta, J. A. Ptak, L. E. Hardin, E. Rodriguez, F. Fuentes, Burner/Welder W. Martinez, Vehicle Operators B. Barrett, C. Falcoa and M. Czerkies shall each be allowed eight (8) hours of pay at their respective straight time rates for each day the contractor's employees performed the work outlined in Part (1) above, beginning August 31, 1988 and continuing until the violation was corrected."

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 employee within the meaning of the Railway Labor Act as approved June 21, 1934.

Form 1
Page 2

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

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

As best as can be determined from the record, this dispute concerns work at the South Kearny Yard on property under the Carrier's control and also on property which the Carrier contends is leased to and under the control of a shipper (American President Intermodal). As to the work the Carrier controls it advised the General Chairman in timely fashion of its intent to contract for "grading and subgrading work." The record appears to indicate that such work is customarily given to outside forces.

As to the other work, there is disparity in the record as to whether the lease was or was not offered to the General Chairman for viewing. In any event, there is no substantial showing that the work in question was under the Carrier's control.

In this state of the facts, there can be no finding that the Carrier failed in its obligation to notify the General Chairman nor that it improperly contracted work under its control normally performed by Maintenance of Way forces.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.