

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29654
Docket MW-29394
93-3-90-3-317

The Third Division consisted of the regular members and in addition Referee Charlotte Gold 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 (Amtrak Panel Renewal System Gang) to perform track work on the south end of Delair Bridge beginning December 22, 1988 continuing (System Docket MW-380).
- (2) The Agreement was violated when the Carrier assigned outside forces (Amtrak Z-012 Tie/Rail Gang) to perform track work from Shore to the north end of Delair Bridge beginning on or about January 3, 1989 (System Docket MW-379).
- (3) The Agreement was further violated when the Carrier failed to furnish the General Chair man with advance written notice of its intention to contract out the work identified in Parts (1) and (2) above as required by the Scope Rule.
- (4) As a consequence of the violations outlined in Parts (1) and/or (3) above, furloughed Maintenance of Way employes R. Acosta, C. W. Adams, K. L. Barnes, J. E. Beckett, S. Buckson, R. N. Bushore, R. L. Coleman, W. A. Cropper, D. K. Davis, W. A. Edison, C. L. Garrison, G. A. Golden, G. F. Hasbrouck, T. C. Hedrick, G. F. Hunter, L. W. Leyanna, R. L. Lucas, S. C. Mancuso, W. Miller, M. A. Neal, S. K. Phillips, C. G. Riley, C. D. Rody, W. J. Schoolfield, D. R. Sinclair, R. A. Taylor, R. Williams, J. W. Wragg, D. G. Bauer, S. C. Boeggeman, D. J. Cerveney, L. Chandler, J. C. Crocker, W. J. Duff, F. J. Eckenrode, C. W. Garriss, O. F. Hines, U. M. Hines, R. J. Januszkiewicz and G. B. Keckler shall each be allowed pay at their respective straight time and overtime rates for an equal proportionate share of the total number of straight time and overtime hours expended by the contractor's forces performing the work referenced in Part (1) above.

(5) As a consequence of the violations outlined in Parts (2) and/or (3) above, furloughed Maintenance of Way employees R. Acosta, C. W. Adams, K. L. Barnes, J. E. Beckett, S. Buckson, R. N. Bushore, R. L. Coleman, W. A. Cropper, D. K. Davis, W. A. Edison, C. L. Garrison, G. A. Golden, G. F. Hasbrouck, T. C. Hedrick, G. F. Hunter, L. W. Leyanna, R. L. Lucas, S. C. Mancuso, C. Miller, W. Miller, M. A. Neal, S. K. Phillips, C. G. Riley, C. D. Rody, W. J. Schoolfield, D. R. Sinclair, R. Williams, J. W. Wragg, D. G. Bauer, S. C. Boeggeman, D. J. Cerveney, L. Chandler, J. C. Crocker, W. J. Duff, F. J. Eckenrode, C. W. Garriss, O. F. Hines, U. M. Hines, R. J. Januszkiewicz, G. B. Keckler, G. T. Lee, J. V. Lucas, J. P. McGough, Jr., J. L. Royer and D. A. Hamaker shall each be allowed pay at their respective straight time and overtime rates for an equal proportionate share of the total number of straight time and overtime hours expended by the contractor's forces performing the work referenced in Part (2) above."

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 employes involved in this dispute are respectively carrier and employe 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.

On February 14, 1989, a continuing claim was filed on behalf of furloughed track personnel on the Philadelphia Division for work begun by contractors on or about December 22, 1989, on Conrail track between the 30th Street Station in Philadelphia to Atlantic City, N.J., that was to be utilized by Amtrak for a "Gamblers Express." Carrier had entered into a temporary lease agreement with Amtrak on October 17, 1988, that allowed entry onto its property for Amtrak to upgrade the Delair Branch No. 2 track and the Pemberton Industrial track from "CP-Jersey" to "CP-Jordan." The Organization contended that Conrail maintained control and ownership of the track and derived revenue from it. In allowing Amtrak forces to remove and rebuild the track, Carrier violated

the Scope rule of the Agreement. Throughout the handling on the property, Carrier rejected this claim for, among other reasons, the fact that the alleged infraction began in December 1989, which was some time ten months hence.

A second claim was filed the same date for work begun "on or about January 3rd of this year" from Shore to the North end of the Delair Bridge. This claim in addition alleged that Conrail failed to advise the General Chairman of its intent to contract out.

The two claims were progressed together on the property and combined on appeal. In its filing to this Board, the Organization describes its first claim as covering "track work on the south end of Delair Bridge beginning December 22, 1988 and continuing...."

Even though the Organization began referring to the proper date for the onset of the infraction by the end of April 1989, there is some basis for finding the first claim (Docket MW-380) to be procedurally defective because of the initial error. More important, the first claim is, for the most part, duplicative of the second claim (Docket MW-379). Thus, because of these two factors, this Board concludes that only the second claim is properly before us and the first must be dismissed.

As to the merits of the case, this Board has long held that where work is not for the exclusive benefit of a Carrier and not within a Carrier's control, it may be contracted out without violation of the Scope Rule. (See, for example, Third Division Awards 20280, 20644.) In this instance, it appears that the work in question was prompted by the fact that Amtrak's track requirements differ from those of Conrail. It was necessary to upgrade and maintain the #2 track between "Shore" and "Jersey" for 30 mph and between "Shore" and "Jordan" for 80 mph for passenger service to Atlantic City. As noted by Carrier, it has no interest in providing passenger service to Atlantic City. From these facts, it seems highly unlikely that Carrier would have initiated the work in question for its own benefit if Amtrak was not utilizing the track.

The Organization argues that Carrier failed to produce a copy of the alleged lease with Amtrak on the property and thus is barred from doing so before this Board. The record reveals that an offer was made to the Organization to view the lease in Carrier's offices. As a consequence, it must be concluded that the lease was available to the Organization during earlier discussions on the property.

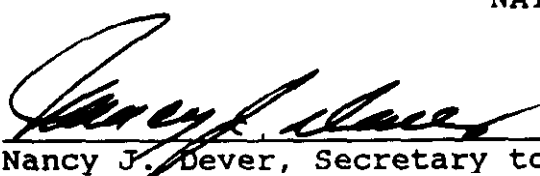
If this Board were to find that Conrail forces should have performed the work, notice to the General Chairman would have been warranted. But since we do not conclude that the track work was undertaken for Conrail's benefit and it appears that control was ceded to Amtrak, no notice was required.

For all the above stated reasons, the claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever, Secretary to the Board

Dated at Chicago, Illinois, this 7th day of June, 1993.