

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29801
Docket No. MW-29449
93-3-90-3-375

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 or otherwise permitted outside forces to perform track maintenance work on the Brockway Glass Lead on the former New Jersey Division beginning February 20, 1989 and continuing through March 16, 1989 (System Docket MW-472).
- (2) The Agreement was further violated when the Carrier failed and refused to furnish the General Chairman with advance written notice of its intention to contract out said work as required by the Scope Rule.
- (3) As a consequence of the violation in Parts (1) and/or (2) above, furloughed Claimants L. E. Hardin, F. D. Swarrow, E. V. Rodriguez, F. Fuentes, H. C. Aulet, J. Torman and J. J. Skraban shall each be allowed one hundred fifty-two (152) 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 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.

This matter concerns work performed in February-March 1989 involving track maintenance work on the so-called Brockway Glass Lead Track. If performed under the Carrier's control and for its benefit, this was work which properly could be claimed to be that regularly and customarily performed by Carrier's Maintenance of Way forces. This dispute here is closely similar to that reviewed in Award 29800, and the Board reaches the same conclusion.

During the claim handling procedure, the Carrier advised the Organization of a lease arrangement providing control by Brockway Glass of the trackage. The General Chairman examined such documentation, although he did not agree that this indicated that the Carrier was without control of the work. The Board is satisfied to the contrary.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 29th day of September 1993.