

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award No. 29874
Docket No. MW-29861
93-3-91-3-232

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 Carrier violated the Agreement when it assigned or otherwise permitted outside forces (D. L. Smith Painting Company) to scrape and paint the Federal Street Bridge in Pittsburgh, PA beginning October 2, 1989 and continuing (System Docket MW-1009).
- (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 violations in Parts (1) and/or (2) above, Messrs. D. E. Burkett and J. Federinko shall each be allowed eight (8) hours of pay per day at their respective straight time rates beginning October 2, 1989 and continuing for each work day 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 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.

The Organization protests Carrier's decision to grant the Urban Development Authority of Pittsburgh's request to scrape and paint the Federal Street Bridge, which was covered with graffiti, in the latter part of 1989. The Organization contends that Carrier contracted out work that had been customarily and historically performed by its forces without prior notice to the General Chairman. The Organization views this as basic, fundamental bridge maintenance work and argues that Carrier benefitted from what it describes as "cosmetic improvements."

Initially, this Board has a problem with the Claimants cited in this claim who were trackmen on duty and under pay at the time and who lacked sufficient seniority to be awarded this work. On this basis alone, the claim may be dismissed. (See Third Division Award No. 29219.)

At the same time, while this Board agrees with the Organization that the scraping and painting of bridges is fundamental maintenance work, there is no showing in the record that the work done on the bridge, requested and paid for by an outside group, was undertaken for anything other than cosmetic purposes. In other words, it cannot be said that the bridge was in need of repainting and that consequently, the work was a benefit to Carrier. There is no evidence that Carrier would have undertaken this project absent the impetus of the Authority. On this basis as well, the claim must be denied.

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 26th day of October 1993.