

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31522  
Docket No. MW-30588  
96-3-92-3-342**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn 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 allowed outside forces (employees of the City of Elizabeth, New Jersey) to perform Maintenance of Way work (operating a log loading truck and a pick-up truck to remove track) on the Conrail's Port Avenue Branch on the New Jersey (Philadelphia) Division from July 30 through August 3, 1990 (System Docket MW-1748).

(2) The Agreement was further violated when the Carrier did not give the General Chairman prior written notification of its plan to assign said work to outside forces.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Foreman G. Fallon, Vehicle Operator D. Seamanik, Welder F. Swarrow and Trackmen J. Hill, G. Santiago, C. Nixon, F. Cueva, P. Rojas, W. Martinez and E. Swarrow shall each be allowed forty (40) hours' pay at their respective straight time rates of pay for the time worked by outside forces."

**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.

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 claim alleges that certain track retirement work was contracted out by the Carrier without timely notification to the Organization. However, the record further discloses that the track was abandoned property and not part of rail operations.

Because the track in dispute was abandoned property, Third Division Award 19994 requires a finding that the contracting out allegations are without merit:

"... [T]he principle issue herein is whether the work of dismantling the abandoned line falls within the scope of the Agreement. We have held in a long line of awards that work on facilities owned by Carrier, but used for purposes other than the operation or maintenance of the railroad, do not come under the scope rule of the agreement (Awards 19639, 19253, 9602, 4783 and others). With respect to abandoned facilities we have ruled similarly. For example, in Award 12918 we said:

'Since the Agreements pertain to work of carrying on Carrier's business as a common carrier, we must conclude that the work of dismantling and removing completely the abandoned property does not fall within the contemplation of the parties. The work cannot be considered maintenance, repair or construction.'

With respect to the Organization's arguments in this case relying upon the Berge-Hopkins letter of December 11, 1981, see Third Division Awards 30515 and 30540 ("The issue of whether the Berge-Hopkins [letter] is applicable has now been resolved in an Award which is confined solely to this question. Public Law Board No. 1016, Award 66-A, issued on January 18, 1993, found that the Berge-Hopkins letter is not applicable on

this Carrier's property.'). Those arguments made by the Organization are therefore not persuasive.

Based on the above, the claim must be denied.

**AWARD**

Claim denied.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

**Dated at Chicago, Illinois, this 25th day of July 1996.**