

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31669
Docket No. MW-31221
96-3-93-3-228

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(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 Township of Vineland, New Jersey) to perform Maintenance of Way work (cut brush along the right of way) on the Vineland Industry Track and the Vineland Secondary Track, Mile Posts 30.6 to 38.0 beginning August 6, 1991 and continuing (System Docket MW-2448).
- (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, Track Foreman W.F. Rankin, Class II Machine Operators J.E. Castaldo, N.J. Parris, Vehicle Operator C.E. Miller and Trackman D.J. Cerveney shall each be compensated at their respective straight time rates of pay `... for 8 hours a day, for 2 days a week that those employees of the Township of Vineland continue to cut the brush along the right of way including credits for time worked towards his vacation, starting with August 6, 1991 and continuing in accordance with Rule 26(f) until they are finished or removed from the property..."

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.

On September 26, 1991, the Organization filed this claim with the Carrier's Division Engineer alleging Vineland, New Jersey City employees had cut grass and brush on the Carrier's property. Throughout the handling of the claim, the Carrier has averred the city employees only cut grass and brush on property belonging to the city.

This claim must fail. The Carrier has no authority or control to assign city employees any work. Also, this Board has no means to determine whether it was Conrail property or city property. The Organization has the burden to prove the Agreement has been violated by providing substantial evidence. Mere assertions are not enough. This Board must dismiss this case because of irreconcilable facts.

AWARD

Claim dismissed.

ORDER

The 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 29th day of August 1996.