

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32330
Docket No. MW-31988
97-3-94-3-355

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

(Brotherhood of Maintenance of Way Employees
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 outside forces (J.M.G. Construction) to perform Bridge and Building Subdepartment work (removal of parapet walls, loose facial concrete and the installation of a new steel angle iron fence) on the 25th Street viaduct located on the Harrisburg Line, Philadelphia, Pennsylvania beginning September 4, 1992 and continuing (System Docket MW-2901).
- (2) As a consequence of the violation referred to in Part (1) above, B&B Foreman J. Love, B&B Mechanics J. L. Royer, M. D. Tallarida, G. A. Golden, C. L. Daub and Structural Welder R. J. Dimatteo shall each be allowed eight (8) hours' pay per day at their respective rates of pay beginning September 4, 1992 and continuing until the violation ceases."

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 were given due notice of hearing thereon.

This dispute involves Carrier's contracting out of bridge repair and fencing work at the 25th Street Viaduct in Philadelphia commencing on September 4, 1992. After due notice to the Organization, that the work involved was of an emergency nature due to safety considerations exposed by a newspaper article dated July 31, 1992. The Organization contended that the work in issue was scope-covered, and disputed Carrier's claim of an emergency based upon its proven knowledge of the poor condition of the bridge some ten months previous.

While the Organization does not agree, based upon a review of the record this Board finds that this claim is identical (except for the number and identity of Claimants named) to the claim filed in Docket MW-31920, and reviewed and denied in Third Division Award 32187 on August 13, 1997. We can find no basis in this record for departing from the findings of the Board in that Award, which we conclude were not palpably erroneous. Since the identical issue raised in this case has already been resolved in Award 32187, we are obliged to dismiss this claim. Third Division Awards 31305, 31229, 31446.

AWARD

Claim dismissed.

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 13th day of November 1997.