

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32868
Docket No. MW-32096
98-3-94-3-488**

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 outside forces (A&R Fence Company) to perform Bridge and Building Subdepartment work (fence installation) at the old Richmond St. Facility on the Delaware Avenue Branch in Philadelphia, Pennsylvania beginning October 1, 1992 and continuing (System Docket MW-2902).**
- (2) The Carrier further violated the Agreement when it failed to provide advance written notice of its intention to contract out the Maintenance of Way work described in Part (1) hereof.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, B&B Foreman J. L. Royer, Mechanics J. Love, M. D. Tallarida, G. A. Golden, C. L. Daub, E. Volbrig and Structural Welder R. J. Dimatteo shall each be allowed eight (8) hours' pay, at their respective straight time rates, for each day that the contractor's forces performed the work in question, beginning on October 1, 1992 and continuing."**

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.

Although there is some confusion in the record concerning the specific dates and particular contractor involved, the evidence shows claim was filed because the Carrier utilized a contractor to install an eight foot high chain link fence around certain property at the old Richmond Street facility on the Delaware Avenue Branch in Philadelphia. The Carrier contended that the property involved was non-operating and abandoned and further designated for major development. The Organization disagreed with that position and contended that "the actively used Delaware Avenue Branch runs through the property."

The Organization has the ultimate burden here. Stripped to its essence, the Organization contends the work was Scope covered, while the Carrier asserts that the property was abandoned and the Organization states the contrary. We note that this Board has previously addressed this issue in Third Division Award 32341 which involved debris clean up at the Delaware Avenue Industrial Track at Richmond and Cumberland Streets in Philadelphia where this Board found:

"... [W]e do hold that the Organization has failed to sustain its burden of proving that the work was performed on property which fell within the coverage of the Agreement . . . Carrier-owned property which is not used for purposes involving the operation or maintenance of the railroad does not come under the Scope Rule of the Agreement."

Given the conflicting status of the record on the abandonment point, and the fact that we do not find Award 32341 to be palpably in error, we are satisfied that the Organization's ultimate burden has not been met to overcome the rationale of Award 32341. The claim shall be denied.

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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 21st day of October 1998.