

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33419
Docket No. MW-32343
99-3-95-3-179

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 (J.M.G. Excavating Co.) to perform Maintenance of Way work (roadbed repairs) between Mile Posts 48.5 and 46 on the Trenton Line beginning November 8, 1993 and continuing (System Docket MW-3299).**
- (2) As a consequence of the violation referred to in Part (1) above, Messrs. W. Pavlick, D. Klucsarits, L. Diehl, B. Lebitz, R. Nemeth and A. Flynn shall each be allowed ten (10) hours' pay, at their respective straight time rates, for each day (Monday through Thursday) and all overtime worked by the contractor's forces, at their respective time and one-half rates, beginning November 8, 1993 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.

The Board has carefully reviewed the instant claim. With minor variation our study of this claim finds it essentially similar to that decided in Third Division Award 33418. While the former claim involved trucks and hauling, this dispute involves front end and track loaders, rock chippers and excavators. The Organization alleges that without notification the Carrier contracted out Scope protected work, which customarily and historically belonged to and was performed by the employees. It rejects the Carrier's assertions that it lacked equipment and available personnel to perform the work. The Organization asserts that there were fully qualified operators available, including the Claimants, as well as equipment available to rent.

The Board's review concludes that notification of the full project was made to the General Chairman by letter of September 2, 1993. That full project included equipment rental for the Pennsylvania and Hagerstown to Oak Island Clearance Projects and stated in pertinent part:

"... we intend to contract for the rental of up to 40 trucks, 2 three quarter Excavators and D4 or larger Bulldozers, on an as needed basis in connection [with the project]."

As we indicated previously, this claim is not for a distinct project, but for a small part of track on a very large project. In this instance, we hold that there is a lack of evidence to find that the Carrier should piecemeal this single distinct few miles of track around Skillman, New Jersey, from the entire project across two states on the Philadelphia and New Jersey Seniority Districts.

AWARD

Claim denied.

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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 July 1999.