

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35562
Docket No. MW-32624
01-3-95-3-551**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen 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 Pittsburgh Seniority District employees to replace 325' of continuous rail at Mile Post 305, No. 1 Track Pittsburgh Line on February 14, 1994, instead of assigning West Regional Production Gang employees (System Docket MW-3541).**
- (2) As a consequence of the violation referred to in Part (1) above, Messrs. C. J. Boley, J. A. Kephart, G. D. Samudosky, K. A. Edwards, S. A. Newlan and J. C. Clark shall . . . be allowed 8 hours each at their respective rates of pay. Additionally, all lost wages and/or credits normally due***"**

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 is one of several virtually identical claims, albeit for different Claimants and dates, filed in April 1994 by the Organization on behalf of members of interregional productions gangs, each alleging that the Carrier violated several Rules by assigning Divisional Maintenance of Way forces to replace welded rail at several different locations. In each of these claims, the Organization alleged that interregional gangs had exclusive rights to lay welded rail. In this particular case, the Organization progressed the claim on behalf of C. J. Boley and five other furloughed members of the West Regional Production Gang roster, alleging that the Carrier violated the Agreement on February 14, 1994 when Pittsburgh Division forces replaced 325 feet of welded rail on the Pittsburgh Line. The claim requests eight hours pay on behalf of each furloughed Claimant.

Because of the reasons set forth in great detail in Third Division Awards 32326 and 33438, which denied the companion claims, the Organization cannot prevail on its claim that West Regional Production Gang had a contractually enforceable right of entitlement to the welded rail work at issue. In addition, the Carrier also pointed out precedent from this property which held that absent a contrary contract provision, furloughed employees like these Claimants are not considered "available" for calls. See Public Law Board No. 3477, Award 6 and Public Law Board No. 2037, Award 4.

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 24th day of July, 2001.