

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36366
Docket No. MW-35907
03-3-99-3-934

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien 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 (National Engineering and Construction) to perform Maintenance of Way work (dig up and install steel castings) at the Cleveland Ore Dock on June 14 through 18, 1997 and June 21 through 25, 1997. (System Docket MW-5294).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman advance written notice of its intent to contract out the work described in Part (1) above as required by the Scope Rule.
- (3) As a consequence of the violations referred to in parts (1) and/or (2) above, Claimants K. G. Champa, F. R. Hoyt, J. D'Orazio, S. J. LaCavera and R. H. Zinni shall now each be compensated for eighty (80) hours pay at their respective straight time rates of pay.”

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.

On March 9, 1997, the Carrier executed a quitclaim deed conveying property it owned in Cleveland, Ohio, to the Cleveland-Cuyahoga County Port Authority (hereinafter referred to as the Port Authority) for an undisclosed sum of money. According to Conrail, the property it conveyed to the Port Authority was the Cleveland Ore Docks.

In the spring of 1997, the Port Authority entered into a contract with National Engineering and Construction Company to dig up and install steel castings over the existing sea wall at the Cleveland Ore Docks.

On August 9, 1997, the Organization filed a claim on behalf of five employees who held seniority on the Cleveland Seniority District in the B&B Department. According to the Organization, the work performed by National Engineering and Construction Company had always been performed by the B&B Department. Accordingly, the Organization contends that the Carrier violated the Claimants' Scope Rule when it contracted out this work rather than have it performed by the B&B Department. The Organization requests that the Claimants be allowed 80 hours of compensation each because of this violation.

The Carrier denied the claim contending that the installation of split castings is not work reserved to B&B Department employees by the applicable Scope Rule. Moreover, Conrail maintains that the work in question was not performed on property that it owned. Rather, it was performed on property that had been conveyed to the Port Authority. The claim was subsequently appealed to the Board.

When the claim was handled on the property, Conrail submitted a quitclaim deed dated March 9, 1997, which evidenced that it had conveyed property at the Cleveland Ore Docks to the Cleveland-Cuyahoga County Port Authority. Conrail contended that the work in dispute that was performed by a contractor was performed on property that had been conveyed to the Port Authority by the March 9, 1997 quitclaim deed. This evidence was never rebutted by the Organization on the property.

There is no evidence in the record before the Board that Conrail paid for the repairs to the seawall made by National Engineering and Construction Company in June 1997. Further, Conrail has persuaded the Board that the work was performed on property that it no longer owned. Therefore, Conrail employees in the B&B Department at Cleveland had no contractual right to work performed for the Port Authority by National Engineering and Construction Company. The claim must be denied as a result.

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 14th day of January 2003.