

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36508
Docket No. MW-35598
03-3-99-3-519**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood of Maintenance of Way Employes**
(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 (Great Lakes Construction) to make grade for a new track alongside the Indianapolis Line between Mile Posts CP 17 and CP 54 beginning on August 18, 1997 and continuing (System Docket MW-5174).**
- (2) The Agreement was violated when the Carrier assigned outside forces (Great Lakes Construction) to perform on-track brushcutting along the right of way on the Indianapolis Line between Mile Posts CP 17 and CP 54 beginning on August 31, 1997 and continuing (System Docket MW-5173).**
- (3) The Carrier further violated the Agreement when it failed to furnish the General Chairman with good-faith written notice of its intention to contract out the work referenced in Parts (1) and (2) above as required by the Scope Rule.**
- (4) As a consequence of the violations referred to in Parts (1), (2) and/or (3) above, the four (4) senior Class 2 Machine Operators and the senior track foreman on the Columbus Seniority District will each be allowed ten (10) hours' pay at their respective rates for each day the outside contractor performs the aforementioned scope covered work.”**

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.

As Third Party in Interest, the Brotherhood of Railroad Signalmen was advised of the pendency of this dispute, but chose not to file a Submission with the Board.

There are two claims presently before the Board for determination. The first, MW-5174, involves the Carrier's use of a contractor for site preparation and other assorted sub-ballast work in connection with the installation of a new track structure between Greenwich, Ohio, and Berea, Ohio. The second, MW-5173, involves the incidental brush cutting that was done during the project. The Organization contends that the work in both claims was scope covered and, therefore, advance notice to the General Chairman was required prior to contracting out. The following is the Scope Rule relied upon by the Organization:

SCOPE

"In the event the Company plans to contract out work within the scope of this Agreement, except in emergencies, the Company shall notify the General Chairman involved in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereto. ***"

Notwithstanding the Organization's argument, we find that the requisite advance notice was given in this case. The Carrier's February 27, 1997 letter to the General

Chairman clearly covers the work in dispute and complied with the Agreement's procedural requirements.

Once the Carrier fulfilled its notice obligations under the Scope Rule of the Agreement, the burden shifted to the Organization to request a conference to discuss the proposed work involved in the contracting transaction. It was at that point that the Organization had the opportunity to make its case for using Carrier forces prior to the work being contracted out. There is no evidence that it did so in the matter at hand.

Having failed to perfect its claims by requesting a conference in accordance with the Scope Rule requirements, we must deny the claims in their entirety.

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 23rd day of April 2003.