

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24143
Docket Number MW-24327

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation (former Lehigh Valley Railroad Co.)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned Maintenance of Way Department work at Wilkes Barre, Pennsylvania to outside forces on August 27, 28, 29, 30 and 31, 1979 and beginning on or about September 8, 1979 (System Docket No. LV-181).

(2) The Carrier also violated Article IV of the May 17, 1968 National Agreement when it did not give the General Chairman advance written notice of its intention to contract said work.

(3) As a consequence of the aforesaid violations, Foreman M. Radzwilla, Welder R. Warner, Welder-Helper M. Ambrose, Machine Operator W. McDermott, Trackman-Truck Driver R. Leck and Trackmen K. Vaow, M. Loyd, J. Williams, J. Napolsky, S. Partilla, A. Gabriele and furloughed Trackman D. Kehler each be allowed pay at their respective rates for an equal proportionate share of the total number of man-hours expended by outside forces."

OPINION OF BOARD: On November 19, 1979, while the matter was being handled on the property, the Carrier advised the Organization that the areas involved in the claims now before this Board belong to the Redevelopment Authority of the City of Wilkes-Barre and not to Conrail. It also stated that the work which was made the basis of the claim did not accrue to Conrail employees to perform.

Again, on October 8, 1980, while the matter was still under review on the property, the Carrier reiterated that factual assertion. Although a Notice of Intention to file with the Third Division of this Board was not submitted until July 7, 1981, we find nothing in the record which challenged, denied or refuted that factual assertions recited above. Under those circumstances, we are of the view that Award No. 23422 - which disposed of a dispute between these same parties - is controlling and accordingly the claim should be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of January 1983.

