

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 (ISTOCK Corporation) to perform culvert cleaning work between 11th and 15th Streets in Beaver Falls, Pennsylvania on October 5, 6, 7, 8, 9, 12 and 13, 1987 (System Docket CR-3663).

(2) The Agreement was further violated when the Carrier failed to timely and properly notify the General Chairman and confer with him concerning its intention to contract said work as contractually stipulated in the second and third paragraphs of the Scope Rule.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, furloughed Pittsburgh Division employees M. K. Ryan, J. M. Federinko, C. E. Schweiger, Jr. and T. J. Surlas shall each be allowed fifty-six (56) hours of pay at their respective straight time rates."

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 employees 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 waived right of appearance at hearing thereon.

By letter dated September 2, 1987, the Carrier notified the General Chairman as follows:

"We intend to contract to clean out open stone culvert between 11th and 15th St. (app. 1000' - 2' of debris) at Beaver Falls, Pa. This site had been deemed a public nuisance and safety hazard and requires immediate attention.

The contractor will provide 1-1/2 cu. yd. traxcavator, 3 triaxle trucks and CAT 977 bulldozer. We do not have this equipment and it cannot be leased from contractors without the provision that the equipment be operated by the contractors' experienced and

qualified operators. Past attempts to rent such equipment have been unsuccessful."

This was in compliance with that portion of the Scope Rule which reads as follows:

"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. 'Emergencies' applies to fires, floods, heavy snow and like circumstances.

If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the Company shall promptly meet with him for that purpose. Said Company and organization representatives shall make a good faith attempt to reach an understanding concerning said contracting, but, if no understanding is reached, the Company may nevertheless proceed with said contracting and the organization may file and progress claims in connection therewith."

The record shows that the Senior Director-Labor Relations discussed the matter with the General Chairman in a telephone conversation on September 15, 1987. At that time, it was mutually agreed to meet on October 7, which meeting was then mutually postponed until October 14, 1987.

Work on the project by the outside contractor commenced on October 5, 1987.

The Board finds that the Carrier properly complied with the Scope Rule notice requirement. Delay in the requested meeting thereafter must be found to be the responsibility of the Organization, at least in substantial part.

As to the propriety of the contracting itself, the Board finds that the special equipment involved, the practical unavailability of rental equipment, and the lack of proper operating licenses by qualified employees were sufficient to warrant the Carrier's action in placing the work with an outside contractor.

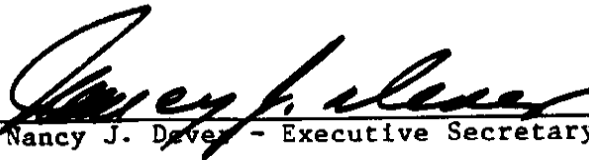
A W A R D

Claim denied.

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Award No. 29024
Docket No. MW-28903
91-3-89-3-308

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 28th day of October 1991.