

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29609
Docket No. MW-29730
93-3-91-3-79

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

(Brotherhood of Maintenance
of Way Employes
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the January 22, 1988 TCOM Agreement when, effective November 20, 1989, without discussing the matter with the BMW General Chairman, it unilaterally moved the TCOM equipment to Rochester, New York for winter maintenance by IAM repairmen instead of moving said equipment to the Canton MW Shop for maintenance by BMW repairmen (System Docket MW-863).

(2) As a consequence of the aforesaid violation, BMW Repairmen J. L. Robinson, J. A. Slayton, M. V. Uhring and R. G. Vaneman shall each be:

'...compensated for all time made by IAM repairman at Rochester, NY from November 20, 1989 until the TCOM is used for the 1990 production season. This should be considered a continuing claim as per Rule 26(f) of the agreement. The Union and the Carrier should jointly review the pay records for the IAM repairmen and equally divide the payment received by the IAM repairmen by the four claimants.'"

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

This claim involves a Side Letter to a January 22, 1988 Agreement between the Carrier and the Organization providing for the system-wide staffing and operation of a Tie Change Out Machine (TCOM). The Side Letter, also dated January 22, 1988, reads as follows:

"It is Conrail's intent to utilize the Canton System MW Shop for the winter repair and maintenance to the TCOM equipment and, in the event there is any change in this plan, it will be discussed with you prior to effecting such change."

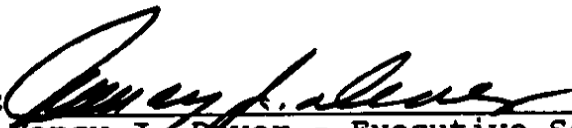
By letter of November 17, 1989, the Carrier advised the Organization that it would not be utilizing the Canton Shop for winter repair and maintenance, and offered to discuss the matter. The parties met on December 4, 1989, for the discussion, and the Organization subsequently filed the instant claim, asserting in essence that the Carrier was contractually bound to have the work performed by employees at the Canton Shop. The Carrier asserted, among other reasons, that the Canton Shop was already fully utilized and there was no room to place the TCOM equipment.

The Board finds that the Side Letter was a unilateral statement of intent by the Carrier and does not constitute a binding contractual agreement. Since the claim is not based on the violation of any Agreement language, the Board has no jurisdiction to act in this matter and the claim must accordingly be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of April 1993.