

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29800
Docket No. MW-29448
93-3-90-3-374

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
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(Consolidated Rail Corporation

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

- (1) The Agreement was violated when the Carrier assigned or otherwise permitted outside forces (Railroad Construction Company) to perform track maintenance work on the lead switch and Tracks Y1 and Y2 at the Perth Amboy Yard on the former New Jersey Division beginning March 6, 1989 and continuing through March 17, 1989 (System Docket MW-471).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intention to contract out said work as required by the Scope Rule.
- (3) As a consequence of the violations in Parts (1) and/or (2), above Claimants L. Hardin, J. Skraban, E. Rodriguez, W. Wentz, C. Falcao, F. Fuentes, H. Aulet, J. Torman and F. Swarrow shall each be allowed eighty (80) 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 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 matter concerns work performed in March 1989 on track in the Carrier's WYE yard at Perth Amboy, New Jersey. Involved was maintenance and upgrading of track which, if performed under the Carrier's control and for its benefit, would be work which could properly be claimed to be that regularly and customarily assigned to Carrier's Maintenance of Way forces. Here, however, the Carrier maintained from the outset of the dispute that the trackage was leased to Stolz Terminal, Inc. for the purpose of storing rail cars and that the work was under the direction and for the benefit of Stolz.

As stated in Third Division Award 28395 and in line with many previous Awards, "The long established principle in this area of conflict is that work which is not for the exclusive benefit of Carrier and not under its control or at its expense, may be contracted without violation of the Scope Rule."

The difficulty here is the protracted discussion during the claim handling procedure as to the Organization's request to examine the lease which the Carrier contended was applicable to the track in question. It appears that the General Chairman was eventually able to examine the lease, although he concluded that the Carrier retained "full control of the work". Thereafter, the Carrier supplied a alleged copy of the lease, although the lease furnished in the Carrier's submission does not appear to cover the period in question.

It is clearly apparent that there was, at best, incomplete communication between the parties on the property. This, however, is not sufficient to warrant a sustaining Award. As best as can be determined, the Organization has not demonstrated that the work was for the Carrier's benefit, at its expense, or under its direct control. In this limited state of the facts, the Organization has failed to convince the Board that the work should have or could have been assigned to Carrier forces.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 29th day of September 1993.