

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29915
Docket No. MW-29656
93-3-90-3-649

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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 Carrier violated the Agreement when it assigned or otherwise allowed outside forces (G. J. Igel Company) to perform track and roadbed construction and maintenance work, i.e., remove brush, install ballast, haul stone, lay track, install ties, tamp ties, tamp and line track, drive spikes and other related track and roadbed construction work at the Marysville, Ohio Honda Plant on the Western Branch, beginning on May 8 through July 3, 1989 (System Docket MW-727).
- (2) The Carrier violated the Agreement when it assigned or otherwise allowed outside forces (G. J. Igel Company) to perform track and roadbed construction and maintenance work, i.e., remove brush, install ballast, haul stone, lay track, install ties, tamp ties, tamp and line track, drive spikes and other related track and roadbed construction work at the Marysville, Ohio Honda Plant on the Western Branch, beginning on July 5 through August 29, 1989 and continuing (System Docket MW-786).
- (3) The Agreement was further violated when the Carrier failed to furnish General Chairman Dodd with timely and proper advance written notice of its intention to contract out the work described in Parts (1) and/or (2) above, as required by the Scope Rule.

- (4) As a consequence of the violations referred to in Parts (1) and/or (3) above, the forty-nine (49) senior furloughed employes on the Columbus Division who hold seniority as Class 2 Machine Operators, trackmen, vehicle operators or track foremen shall each be allowed three hundred twenty-eight (328) hours of pay at their respective straight time rates.
- (5) As a consequence of the violations referred to in Parts (2) and/or (3) above, the seventy-seven (77) senior furloughed employes on the Columbus Division who hold seniority as Class 2 Machine Operators, welders, repairmen, vehicle operators, trackmen or track foremen shall each be allowed three hundred twenty (320) hours of pay at their respective straight time rates. In addition, the aforementioned employes shall each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man-hours expended by the outside forces beginning August 30, 1989 and continuing."

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.

The Organization and the Carrier have raised timely objections to evidence offered de novo in the other party's Submission. None of that evidence will be considered by this Board. The Board's

findings are based solely upon the record established on the property.

The basic facts of the instant case are not in dispute. On December 23, 1988, Carrier sent the following letter to General Chairman J. P. Cassese:

"Mr. J. P. Cassese, Sr., General Chairman
Brotherhood of Maintenance of
Way Employes
1165 Markkress Road, Suite B
Cherry Hill, NJ 08003

Dear Sir:

We intend to contract for sitework and sub-ballast construction of the support yard at Marysville, Ohio which will service Honda of America. All track work will be performed by Conrail forces.

We do not have the necessary scrapers, dozers, graders, excavators, compactors, cranes or qualified equipment operators to accomplish the project work in the time frame allotted.

Very truly yours,

/s/ G. F. Bent

G. F. Bent
Senior Director-Labor Relations

cc: Mr. J. Dodd, General Chairman
Mr. J. J. Davison, General Chairman
Brotherhood of Maintenance of Way Employes"

The work in question was begun on or about May 8, 1989, and was completed several months later.

On July 5, 1989, and August 30, 1989, General Chairman J. Dodd submitted claims requesting 328 and 320 hours straight time pay, respectively, for 126 unnamed furloughed employees. The Organization based its claim upon two premises: 1) that Carrier had failed properly to notify the Organization's General Chairmen of its intent to contract out the work at issue; and 2) that the work performed by the subcontractor was work reserved by exclusive past practice to Maintenance of Way Employees. Both claims were denied, and subsequently processed, as a combined single claim, up to and

including the highest Carrier officer authorized to handle such matters.

The Carrier maintains that the entire claim is mooted in light of the fact that none of the General Chairmen requested a meeting to discuss the Carrier's letter of December 23, 1988. The evidence before this Board suggests that the Carrier is correct. At no time in the submission of this claim or in subsequent correspondence did Chairman Dodd deny receiving his copy of Carrier's December 23, 1988 notice of intent. Rather the Organization protested the form of the notification (by means of carbon copies addressed to General Chairmen Dodd and Davison) and a note to Carrier Officer J. D. Cossel on his "blind copy" of the letter stating "You may proceed accordingly". The Organization insists that this latter message indicates that Carrier's notice of December 23, 1988, was, in fact, simply a pro forma letter issued after the decision to contract out the work in question had already been made.

There is no evidence on the record before the Board to suggest that Carrier acted in any manner other than good faith in notifying the Organization of its intention to contract out some of the work in its Marysville, Ohio, yard. Therefore, in light of the fact that none of the Chairmen notified elected to exercise their contractual rights to confer with the Carrier regarding the work, the instant claim must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 9th day of November 1993.