

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29933
Docket No. MW-29460
93-3-90-3-377

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 Employes
(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 (Amtrak) to perform track work (laying rail) on Delair Bridge beginning on or about April 14, 1989 and continuing through April 29, 1989 (System Docket MW-488).
- (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) The claim as presented by Vice Chairperson DiStefano on May 17, 1989 to the Carrier shall be allowed as presented because the claim was not disallowed by Manager Labor Relations F. J. Doyle (appealed to him in a letter dated June 8, 1989) in accordance with Rule 26 of the Agreement.
- (4) As a consequence of the violations in Parts (1) and/or (2) and/or (3) above, Conrail Maintenance of Way employes M. A. Neal, T. J. Pinkett, D. O. Wilkerson, L. Chandler, S. P. Stephens, K. Adams, J. H. Dennis, E. Benjamin, J. J. Magee, E. F. Troy, H. Johnson, A. Mines, F. B. Worthington, W. E. Brown, C. D. Green, T. E. Bratcher, C. Moore, S. D. Henderson, M. J. Hillanbrand, R. Cona, W. Tolliver, D. Jackson, C. J. Richardson, C. Riley, W. A. Edison, G. Willis, J. Caraballo, D. P. Ponder, R. Jefferson, R. Williams, R. Acosta, R. A. Taylor, C. Woodbridge, L. T. Downing, D. L. Garrison, D. Cerveny, C. W. Adams, Carl Miller, Joe Castaldi, J. Royer, C. V. Lucas, R. Welch, D. J. Wilson and J. R. Wragg shall each be allowed pay at their respective straight time and overtime rates for an equal pro-portionate share of the total number of straight time and overtime hours expended by the contractor's forces performing the work referenced in Part (1) above."

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 dispute concerns track work performed on the Delair Bridge which the Organization contends was improperly "contracted with an outside concern". The work was in fact performed by employees of the National Railroad Passenger Corporation (Amtrak). Throughout the claim handling procedure, the Carrier contended that the involved trackage (including the Delair Bridge) was under lease arrangement with Amtrak and that the work was done solely for the use of and under the direction of Amtrak.

Third Division Award 29654 resolved a dispute concerning work on this track, determining that it could not be concluded "that the track work was undertaken for Conrail's benefit or it appears that control was ceded to Amtrak". The Board has no basis here to find otherwise. It follows that there was no requirement to notify the Organization of the work, since it was not "contracted" but rather performed by and under the control of another carrier.

With this finding, the Board need not review the procedural issues raised by the Parties in connection with the Claim.

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 2nd day of December 1993.