

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30845
Docket No. MW-29365
95-3-90-3-277

The Third Division consisted of the regular members and in addition Referee Gil Vernon 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 (Queen City Construction) to perform roadbed construction work (dirt work and hauling and spreading stone) at the Honda Track on the Western Branch in Peoria, Ohio, beginning September 27, 1988 and continuing (System Docket MW-355).
- (2) 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 said work as required by the Scope Rule.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the twenty (20) senior furloughed employees on the Columbus Division who hold seniority as class 2 Machine Operators or Vehicle Operators shall each be allowed three hundred thirty-six (336) 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 employee 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.

There are three General Chairmen on this particular property. On October 14, 1986, the Carrier sent the following notice to General Chairman J. P. Cassese:

"We intend to contract for the site work and preballasting for the proposed Wye Track at Peoria, Ohio, to serve Honda of America off the Scotts Lawn Secondary Track.

The estimated cost of this contract is \$85,962. We anticipate the work to begin in November, 1986, and completed in December, 1986. The work must be expedited to coincide with Honda's major plant expansion which will further increase outbound railcar loadings. The Company does not have the necessary scrapers and excavators or field engineering personnel to accomplish the project work in the time frame allotted."

On November 25, 1988, a District Chairman belonging to the committee headed by General Chairman Dodd filed a claim protesting the use of an outside contractor to prepare the road bed as set forth in the notice. The claim as it developed also protested the lack of notice to General Chairman Dodd.

The Carrier's position is premised principally on Paragraphs 1, 2, and 3 of the Scope Rule which reads as follows:

"SCOPE

These rules shall be the agreement between Consolidation Rail Corporation (excluding Altoona Shops) and its employees of the classifications herein set forth represented by the Brotherhood of Maintenance of Way Employees, engaged in work generally recognized as Maintenance of Way work, such as, inspection, construction, repair and maintenance of water facilities, bridges, culverts, buildings and other structures, tracks, fences and roadbed, and work which, as of the effective date of the Agreement, was being performed by these employees, and shall govern the rates of pay, rules and working conditions of such employees.

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." (Emphasis added)

The record presents many issues; however, the fundamental question is whether the particular work involved here (so-called sub-ballast work) is "roadbed" work as the Parties used that term in Paragraph 1 of the Scope Rule. Award 29, Special Board of Adjustment No. 1016 is dispositive of this question. It found that the Organization has no claim to such work given a history of contracting out similar work. There is no basis in this record to issue a contrary finding. Accordingly, it is not necessary to address the other issues raised by the Parties.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 27th day of April 1995.