

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30947
Docket No. MW-30017
95-3-91-3-413

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn 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 or otherwise permitted outside forces (Regen Contracting) to perform work of renewing Track Nos. 6 and 7 in the Coal Yard at Jersey City, New Jersey, beginning February 19, 1990 and continuing (System Docket MW-1215).
- (2) As a consequence of the aforesaid violation, Claimants O. Robinson, B. Barrett, C. Falcoa, E. Rodriguez, F. Swarrow, A. Zabrecky, R. Gale, A. Dinkelo, R. Parvel and R. Fogel shall be paid eight (8) hours' pay at their respective straight time rates for each day, Monday through Friday, and they shall be paid eight (8) hours' pay at their respective time and one-half overtime rates for each Saturday and Sunday, beginning February 19, 1990 and continuing until the violation is corrected."

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.

By lease dated February 8, 1990 (a copy of which was provided to the Organization on the property in accord with its request), the Carrier leased to East Jersey Railroad & Terminal Co., Inc. "all of tracks 676 and 677 and switches adjacent to said track in the 'so-called' Coal Yard" in Jersey City, New Jersey.

Section 4 of the lease provided:

"Section 4: Maintenance

Lessee [East Jersey Railroad] at its sole cost and expense and to the reasonable satisfaction of Conrail, shall repair and maintain the Tracks and keep the Tracks clear of all obstructions and hazardous conditions and in compliance with all federal, state and local laws, rules and regulations. All maintenance shall be to minimum of Federal Railroad Administration Class I track standards. Rail access to the Tracks shall be similarly maintained by Conrail. Lessee is aware that tracks 676 and 677 are presently in need of repair and improvement in order to bring them up to FRA Class I Track Standards. Lessee is also aware that Conrail cannot provide service to these tracks until said track and three switches, indicated on Exhibit "A" are repaired and improved to FRA Class I Standards. In addition, said repair shall be done in a manner subject to Conrail's Engineering Department approval. Any and all repairs, replacements and improvements shall become the property of Conrail at the termination of this lease."

Commencing February 19, 1990, Regen Contracting performed work renewing Track Nos. 6 and 7. This claim asserts that such action amounted to an improper contracting out of work by the Carrier. According to the Carrier, the track in question was leased to the East Jersey Railroad which was responsible for maintenance of that track and the Carrier did not contract for the work in question.

The track upon which the contractor performed the work was under the control of the East Jersey Railroad pursuant to the terms of its lease with the Carrier. The lease made the East Jersey Railroad responsible for maintenance of the track. The Carrier did not hire the contractor to perform the work. The work in dispute was therefore outside the scope of the Agreement. There is nothing in this record to show that the lease arrangement between the Carrier and the East Jersey Railroad was anything other than an arm's length transaction. The claim must therefore be denied. See Third Division Awards 29439, 29601.

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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 29th day of June 1995.