

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32098  
Docket No. MW-31668  
97-3-93-3-694**

**The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.**

**(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(CSX Transportation, Inc. (former Baltimore and  
( Ohio Railroad Company)**

**STATEMENT OF CLAIM:**

**"Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier assigned outside forces to perform Bridge and Building Subdepartment work [removed two (2) steel structures from the exit end of Nos. 1 and 2 thaw sheds] at Curtis Bay Coal Pier July 25, 26, 27, 28, 29 and 30, 1992 [System File B-TC-8230/12(93-81) BOR].**
- (2) The Agreement was further violated when the Carrier failed to give the General Chairman advance written notice of its intent to contract out the work.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Carpenter Foreman R. Rice, Carpenter Welders R. Resch, R. Simmons and R. A. Warnick and Carpenters N. George and D. Selzter shall each receive ten (10) hours' pay for each day cited, at their respective rates, for the three hundred and thirty-six (336) man-hours' expended by the outside forces in the performance of the work in question."**

**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 were given due notice of hearing thereon.

On September 18, 1992, the Organization filed a claim alleging that the Carrier violated the Agreement when it hired an outside contractor to dismantle two steel structures on July 25, 26, 27, 28, 29 and 30, 1992. The Organization alleges that sometime prior to July 25, the Claimants were assigned to dismantle the two steel structures, but the Carrier reassigned the Claimants to perform work elsewhere and the outside contractor was then hired to "complete the work." The Organization contends that work of this nature has been customarily and historically performed by B&B subdepartment forces. The Claimants were fully qualified to perform the work in question.

The Carrier denied the claim contending that the Claimants were on duty and under pay and lost no monetary compensation. Moreover, the Carrier argues that it had sold the two steel structures to the outside contractor and that the outside contractor then assumed ownership of any salvageable material, and therefore, there was no violation.

The Board reviewed the evidentiary record and finds that the Organization has not met its burden of proof that the Carrier violated the Agreement. The record reveals that the Carrier no longer owned the steel structures that were dismantled at the time of the alleged violation. The Carrier presented sufficient evidence that the structures had been sold prior to the dismantling work that was performed. The Board has consistently held that once another company acquires the subject property, that new company then controls who operates it and who dismantles it. Therefore, the Carrier is not, by Agreement, obligated to assign the work to Organization-represented employees. See Third Division Awards 30948 and 30838.

Because the Organization has not met its burden of proof in this case, the claim must be denied.

**AWARD**

**Claim denied.**

**ORDER**

**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 9th day of July 1997.**