

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32190
Docket No. MW-31936
97-3-94-3-301**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(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 (Jersey Welding & Fence Co.) to perform Bridge and Building Subdepartment work (fence installation) on the Philadelphia Division on October 28 and 29, 1992 (System Docket MW-2905).**
- (2) As a consequence of the violation referred to in Part (1) above, B&B Mechanics D. Kurak, C. Hansler, R. Zerfuss, T. Newton and G. Miller shall each be allowed sixteen (16) hours' 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 were given due notice of hearing thereon.

This is a contracting out dispute in which the Board reaches the following conclusion. The Carrier provided proper notice by letter dated August 24, 1992 of its intent to install chain link fence on the National Docks Secondary. Proper discussions were held and the fencing work was subsequently contracted out.

The Organization alleges that the fence installation work performed by the outside contractor was protected by the Scope of the Agreement and the April 24, 1989 Letter. The Organization argues that the Claimants were fully qualified to perform this routine fencing project, which has been customarily and historically performed by the employees.

The Carrier denied on the property that it violated the Agreement. The Carrier defends its contracting out based upon its need to comply with the prompt requirements of the municipal government. The Carrier also points out that there were no furloughed employees and the 1989 Fencing Agreement contemplates emergency work. The Carrier argues it is not required to hire new employees for fence installation. It argues that its action is analogous to that decided by Third Division Award 29204.

The Board finds no support for the Carrier's position in the on-property record. Whatever the requirements of the local government's Engineering Department, they are not in the record of this case. There was no evidence of any emergency which would have permitted contracting without the prior notice of August 24, 1992 and which didn't begin for over two months. This is not a demonstrated emergency or an action done promptly. The Organization noted that the full National Docks Project dismantled and replaced piers and overhead railroad track. After completion the Carrier then installed fencing as "finishing work on this part of the project." The Carrier's final denial included an "aside" comment that it was "not required to piecemeal work," but there is no evidence in this claim that the "aside" has any merit whatsoever.

The Board has analyzed all the Awards submitted by the parties in reaching its decision on merits and remedy. We can not find sufficient clarity in Third Division Award 29204 to consider its circumstances and urgency analogous to these instant facts. In the state of this record, the Board finds that the Carrier improperly contracted out work and the claim is sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 13th day of August 1997.