

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32320
Docket No. MW-31628
97-3-93-3-632**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers 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 (Specialty Steel) to perform Maintenance of Way work (removal of rail, plates and other track materials) on the Monongahela Secondary, Pittsburgh Division between Mon City to Brownsville beginning April 27, 1992 and continuing (System Docket MW-2672).**
- (2) The Agreement was further violated when the Carrier failed to give the General Chairman prior written notice of its plan to contract out said work to outside forces as required by the Scope Rule.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Messrs. G. Lowmiller, J. Thornton, J. DeCock, M. Demeno, B. Miller, F. Fuller, R. Beam, H. Mullen, R. Moser and J. Slike shall each be allowed ten (10) hours' pay per day at their respective straight time rates and all overtime expended by the outside forces in the performance of said work, with credits for vacation and other benefits beginning April 27, 1992 and continuing."**

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.

Beginning April 27, 1992, the Carrier hired an outside contractor to dismantle and recover track materials on the Monongahela Secondary from Mon City to Brownsville, Pennsylvania.

The Organization filed the instant claim arguing that work of this nature has customarily, historically and traditionally been assigned to and performed by employees of the Track Subdepartment. The Claimants were willing and able to perform the work in question had they been offered the opportunity to do so. Furthermore, the Organization argues that the Carrier violated the Agreement by not giving proper advance notice of its intent to hire an outside contractor.

The Carrier denied the claim contending that there was no rule violation because the Carrier had sold the track known as the Monongahela Secondary to Steel Processing Services, Inc., an outside concern. The Carrier argues that Steel Processing Services, Inc. hired the outside contractor to perform the work in question, not the Carrier. Therefore, the Carrier contends that it was not obligated to give notice to the Organization.

The parties being unable to resolve the issues at hand, this matter came before this Board.

This Board has reviewed the record in this case and we find that the Carrier failed to give the proper advance written notice of its plan to contract out the scope covered work in clear violation of the Scope Rule. The Scope Rule states, in part:

"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."

In this case, the Carrier does not deny that it failed to notify the Organization that the subject work would be handled by an outside company.

The Carrier failed to present sufficient evidence to support its affirmative defense that it had sold the track materials in question. Since the Agreement applicable in this instance covers the work of removing track and appurtenances thereto, this Board must find that the Carrier violated the Agreement when it failed to notify the General Chairman of its intention to contract out the work. This Board finds that the work involved here, the recovery of track materials, was clearly connected with the Carrier's railroad operation and should have been performed by the Claimants.

This Board has held on numerous occasions that if the Carrier takes the position that it had sold the property, it must come forward and produce the contract. In this case, the Carrier failed to provide the documentation which may have defeated this claim. See Award 31521 and the cases cited therein.

Moreover, because the failure to assign the work to the Claimants resulted in a loss of work opportunities, the requested monetary remedy is appropriate.

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 November 1997.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

INTERPRETATION NO. 1 TO AWARD NO. 32320

DOCKET NO. MW-31628

NAME OF ORGANIZATION: (Brotherhood of Maintenance of Way Employees)

NAME OF CARRIER: (Consolidated Rail Corporation)

(1) The Agreement was violated when the Carrier assigned outside forces (Specialty Steel) to perform Maintenance of Way work (removal of rail, plates and other track materials) on the Monongahela Secondary, Pittsburgh Division between Mon City to Brownsville beginning April 27, 1992 and continuing (System Docket MW-2672).

(2) The Agreement was further violated when the Carrier failed to give the General Chairman prior written notice of its plan to contract out said work to outside forces as required by the Scope Rule.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Messrs. G. Lowmiller, J. Thornton, J. DeCock, M. Demeno, B. Miller, F. Fuller, R. Beam, H. Mullen, R. Moser and J. Slike shall each be allowed ten (10) hours' pay per day at their respective straight time rates and all overtime expended by the outside forces in the performance of said work, with credits for vacation and other benefits beginning April 27, 1992 and continuing.

AWARD INTERPRETATION

This Board issued an Award sustaining the claim on November 13, 1997. The Carrier subsequently compensated the Claimants for the period from April 27, 1992, through May 17, 1992. Carrier contended that the project was allegedly completed on May 17, 1992.

The Organization takes issue with the Carrier's position stating that all of the evidence demonstrates that outside forces worked on that project until late November 1992 retiring the 25 miles of welded ribbon rail. The Organization also contends that the Carrier failed to produce any record in the on-property correspondence to definitively establish the contractor's completion date. Therefore, the Carrier has submitted no evidence to support its decision to provide compensation only for the period from April 27, until May 17, 1992.

This Board has now had an opportunity to revisit the record in this case and we find that the Carrier has not substantiated its position that the work ended on May 17, 1992. Therefore, we must find again that the Carrier must compensate the Claimants for the period April 27, 1992, through the end of November of 1992. The only evidence in the record indicates that the outside forces did not leave the property until some time late in November of 1992.

Referee Peter R. Meyers who sat with the Division as a neutral member when Award 32320 was adopted, also participated with the Division in making this Interpretation.

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

Dated at Chicago, Illinois, this 23rd day of June 1999.