

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35002
Docket No. MW-31096
00-3-93-3-87

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

(Brotherhood of Maintenance of Way Employes
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 an outside concern (Amtrac Construction) to perform track rehabilitation work on River Line Track Nos. 1, 2, 3 and 4 at Conway Yard beginning August 9, 1991 and continuing (System Docket MW-2354).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper advance written notice of its intention to contract out said work and discuss the matter in good faith as required by the Scope Rule.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Messrs. A. Pharr, M. Spickerman, T. Townsend, G. Little, D. Burkett, T. Townsend, R. C. Atkinson, G. Pachuta, F. Gardner, W. M. Burton, R. Marshall, III, and A. B. Rooney shall each be compensated eight (8) hours' pay per day at their respective straight time rates, compensated for all overtime and receive credits for benefits for each day and month worked by the outside forces.”

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 dispute is identical to that reviewed and decided in Third Division Award 34993. The facts being the same in all respects except for the dates of claimed violations, the Board obviously reaches the same conclusion as in that Award.

Accordingly, the Organization's claim is granted for August 9 through August 27, 1991, the dates of the claimed violations. Eligible Claimants shall be compensated eight hours' pay for each claim day at their respective straight time rates, and further, shall be compensated for all lost overtime and shall receive credits for benefits for each day and month worked by employees of Amtrac during the claim period.

As we held in Award 34993, under these specific facts, employees who were working, were furloughed or otherwise were not available to perform the disputed work on August 9 through August 27, 1991 shall not be eligible for an award of damages.

AWARD

Claim sustained in accordance with the Findings.