

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35811
Docket No. MW-32923
01-3-96-3-290**

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 carpenters to perform plumber duties (install 24” sewer lines to connect with 6’ line with City of Pittsburgh sewer facility at Alcosan Plant) on the Fort Wayne Line at the north side of the city near Pennsylvania Yard on October 3, 1994 and continuing (System Docket MW-3762).**
- 2. As a consequence of the aforesaid violation, Plumber Foreman R. Jessop and Plumber G. Cotter shall each be allowed eight (8) hours’ pay per day at their respective time and one-half rates beginning October 3, 1994 and continuing until the violation ceased and they shall each receive credit for benefit and vacation purposes.”**

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.

Claimant Jessop is a Plumber Foreman. Claimant Cotter is a Plumber.

According to the Organization, commencing October 3, 1994, Carpenters, rather than the Claimants, were utilized to install sewer lines to connect with a six-foot combination sanitary and storm system of the City of Pittsburgh's sewage facility at the Alcosan Plant. On the property, the Carrier maintained that the work was not actually the installation of a sewer line as asserted by the Organization, but was the installation of a drainage culvert to drain storm and surface water and carried no domestic sewage. The Organization conceded that, in the past, "B&B mechanics may have installed drainage pipes but not sewer lines connecting into the county sewer lines." However, the Organization characterized the Carrier's assertion that the work involved was the installation of drainage culvert as "inaccurate." The Organization also proffered a May 1, 1995 letter from the City of Pittsburgh Department of Public Works which referred to "the large diameter sewer under the railroad which you recently tied into, is a combination sanitary and storm sewer." The Carrier, in response, points out that the letter relied upon by the Organization referring to the "recent . . ." work, was dated some seven months after the work was performed and further points out that a picture submitted by the Organization actually shows drainage pipe along the track.

The premise of the Organization's position in this case is that the work involved was the installation of sewer lines - which it claims only Plumbers can install - rather than the installation of drainage pipes which the Carrier asserts was the work in dispute (and which the Organization concedes has been performed in the past by B&B mechanics). To successfully make its argument, the Organization has the burden to show that the disputed work was, in fact, the installation of sewer lines. Based on our review of the record, we cannot say that there is a sufficient factual basis for us to conclude that the work was the installation of sewer lines as the Organization contends rather than the installation of drainage pipes as the Carrier asserts. The parties have simply made equally competing and contradictory assertions. With such conflicting assertions, we cannot find that the Organization's burden has been met.

The letter from the City of Pittsburgh does not resolve that factual conflict in the Organization's favor. That letter - written some seven months after the work began - refers to work "which you recently tied into." We cannot say for certain that the letter is referring to the same work involved in this case.

This record simply is in irreconcilable conflict on the critical factual premise of the Organization's argument - i.e., that the work involved was the installation of sewer lines. If the Organization's factual premise that the work was the installation of sewer lines is not sufficiently demonstrated and given that the Organization concedes that B&B Mechanics have in the past performed the installation of drainage pipes, the Organization's contractual argument must fail.

In light of the above, we do not reach the Carrier's assertion that even if the work was the installation of sewer lines, the Scope Rule permits the Carrier to assign employees other than Plumbers to perform the work.

Based on the above, the claim is 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 14th day of November, 2001.