

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36589
Docket No. MW-35609
03-3-99-3-531**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien 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 (CC&G) to perform track removal and grade work in connection with expansion of the Intermodal Terminal at Livernois Yard, Detroit, Michigan on August 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, September 2, 3, 4, 5, 8, 9 and 10, 1997 (System Docket MW-5144).**
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper advance written notice of its intent to contract out the work described in Part (1) above and when it refused to meet with the General Chairman as required by the Scope Rule.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Foreman L. Boyd, Machine Operators E. Valley, D. Tedora, A. Serratos, D. Liford, Vehicle Operator G. Valentine, Welder D. Jopek and Welder Helper S. Strickland shall now be compensated for ' . . . eight hours per day each for all dates, except August 23 and 24, 1997, which is for eight (8) hours overtime for each day, plus all credits and benefits denied due to these violations of Rules 1, 17 and the Scope Rule, which created a loss of work opportunity.'"**

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.

In August 1997, due to an increase in traffic the Carrier was required to expand its Intermodal Terminal at Livernois Yard in Detroit, Michigan, to provide additional storage space for empty intermodal chassis. Conrail forces were used to construct the track and install new grade crossings. However, site preparation and removal of abandoned track was contracted out to a company known as CC&G.

On August 12, 1997, the Carrier notified the General Chairmen involved that it planned to contract out this site preparation work and removal of abandoned track. On August 19, 1997, the Organization responded that this work came within the B&B and Track forces' Scope Rule. The Organization also claimed that the August 12, 1997 notice was vague because it failed to identify when the work was anticipated to begin; the number of contractor employees involved; the equipment needed that Conrail did not possess; and the anticipated length of the project.

CC&G performed the site preparation work and dead track removal on August 18 - 27, September 2 - 5 and September 8 - 10, 1997. On October 11, 1997, the Organization filed a claim on behalf of a Detroit District Foreman, four Machine Operators, a Vehicle Operator, a Welder and a Welder Helper whom it claims should have been used to perform the work contracted to CC&G. The Carrier denied the claim insisting that the work contracted to CC&G did not come within the Organization's Scope Rule.

When the claim was progressed to the Board the Organization argued for the first time that the Carrier failed to give the involved General Chairman timely advance notice of its intent to contract out work coming within the scope of the Agreement. This assertion was never raised during the handling of the claim on the property. The General Chairman averred that the Carrier's August 12, 1997 notice was vague, but he never claimed that it was untimely. Accordingly, that contention cannot be considered by the Board.

Among other work, the parties' Scope Rule recognizes that the construction of tracks and roadbed is reserved to Maintenance of Way employees. Maintenance of Way employees constructed Track No. 3 and installed three new grade crossings as part of the expansion of the Intermodal Terminal at Livernois Yard in Detroit.

The Conrail Scope Rule does not specifically reserve site preparation and removal of abandoned track to Maintenance of Way employees. The Organization has not demonstrated that on Conrail, Maintenance of Way employees have customarily and traditionally performed this work. Accordingly, the Carrier was not prohibited from contracting this work to CC&G at the Intermodal Terminal expansion project in Livernois Yard. The claim must be denied as a result.

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 16th day of June 2003.