

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37165
Docket No. MW-36155
04-3-00-3-345**

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen 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 (Great Lakes Construction Company) to perform Maintenance of Way work (trench and install concrete pipe and catch basin) at the old Back Shop Yard at Collinwood Yard in Cleveland, Ohio on July 27, 28, 29, 30, 31, August 3, 4, 5, 6, 7, 10, 11, 12, 13 and 14, 1998 [Carrier's File 12(99-612)].**
- (2) The Agreement was violated when the Carrier assigned outside forces (Great Lakes Construction Company) to perform Maintenance of Way work (trench and install concrete pipe and catch basin) at the old Back Shop Yard at Collinwood Yard in Cleveland, Ohio on August 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 31, September 1, 2, 3, 4, 8, 9, 10, 11 and 12, 1998 [Carrier's File 12(99-616)].**
- (3) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intent to contract out the work described in Parts (1) and (2) above as required by the Scope Rule.**
- (4) As a consequence of the violations referred to in Parts (1) and/or (3) above, Claimants K. G. Champa, F. R. Hoyt, S. J. La Cavera, K. Watts, W. D. Nicklow, J. A. Antonello, B. Cruxton, E. Wilson**

and M. S. Gartner shall now each be compensated for eight (8) hours' pay at their appropriate straight time rates of pay and two (2) hours' pay at their appropriate time and one-half rates of pay for each date of July 27, 28, 29, 30, 31, August 3, 4, 5, 6, 7, 10, 11, 12, 13 and 14, 1998.

- (5) As a consequence of the violations referred to in Parts (2) and/or (3) above, Claimants K. G. Champa, F. R. Hoyt, S. J. La Cavera, K. Watts, R. H. Zinni, W. D. Nicklow, J. A. Antonello, B. Cruxton, E. Wilson and A. S. Gartner shall now each be compensated for eight (8) hours' pay at their appropriate straight time rates of pay and two (2) hours' pay at their appropriate time and one-half rates of pay for each date of August 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31, September 1, 2, 3, 4, 8, 9, 10 and 11, 1998, and each Claimant shall be compensated for ten (10) hours' pay at their appropriate time and one-half rates of pay for each date of August 22, 29 and September 12, 1998."

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.

Subsequent to the STB approval of the CSX/NS application for merger-control of Conrail ("Carrier") under date of June 26, 1998, Conrail ("Landlord") entered into a "Property Lease and License Agreement" with CSXI Intermodal ("Tenant") granting the latter a limited right of access and dominion/control over certain specifically designated acreage and structures in Collinwood Yard so CSXI could

construct a new intermodal terminal. Thereafter, CSXI contracted with Great Lakes Construction Company for the performance of certain site preparation, grading, and excavation work in August-September 1998.

The Organization filed the instant claims for the nine named Claimants, alleging that the Carrier violated the Notice provisions of the Scope Rule by improperly contracting out that work. The claims describe the work in dispute as follows: "[L]aying in new drainage to the new CSX van site being constructed in the old locomotive back shop area. The work consists of trenching, installing concrete pipe & catch basins and backfilling with stone the trench." In denials of the initial claims and in denying all levels of appeal, the Carrier relied upon the Property Lease and License Agreement of June 26, 1998. We examined that document in detail and while it does provide substantial benefits to the Carrier, there can be no room for reasonable doubt that it relinquishes to CSXI dominion and control over the "new CSX van site being constructed in the old locomotive back shop area." A long line of authoritative precedent requires denial of the instant claims. See Third Division Awards 35762, 32810, 32317, 32308, 30947, 29933, 28941, 29581, and Public Law Board No. 5267, Award 1.

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 28th day of September 2004.