

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 64

Case No. 64

Referee Fred Blackwell

Carrier Member: J. H. Burton

Labor Member: K. R. Mason

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it assigned an outside concern to perform bridge undercutting work between Framingham, Massachusetts and Chatham Center, New York beginning July 30, 1987 and continuing (System Dockets CR-3498, CR-3628, CR-3998, CR-4171 and CR-4172).
2. The Carrier violated the Agreement when it assigned an outside concern to perform right of way ditching, hauling of fill material and installation of drain pipes between Framingham, Massachusetts and Chatham Center, New York beginning June 1, 1988 and continuing (System Dockets MW-205, MW-206 and MW-207).
3. As a consequence of the violation referred to in Part (1) hereof (System Docket CR-3498), Track Foreman W. Cummings, Machine Operators C. Pappas, C. Laffond, J. P. O'Conner, Vehicle Operators T. Pais, D. Stumborg, R. Mercure, M. Damours, C. Harrison, M. Phelan, Trackmen D. Ravizza, T. Evans and J. Donley shall each be allowed pay at their respective rates of pay for all hours worked by the contractor's forces beginning July 30, 1987 and continuing.
4. As a consequence of the violation referred to in Part (1) hereof (System Docket CR-3628), Track Foreman M. Callahan, Machine Operators G. McMullen, D. Tolomeo, J. P. O'Conner, J. J. O'Conner, A. McMenamin, Vehicle Operators T. Pais, D. Stumborg, C. Sorensen, M. Camours, Trackmen V. Okskin and S. Ellis shall each be allowed pay at their respective rates of pay for all hours worked by the contractor's forces between September

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21, 1987 and November 5, 1987.

5. As a consequence of the violation referred to in Part (1) hereof (System Docket CR-3998), Machine Operators J. B. Tytula, C. Pappas, J. J. O'Conner, M. Callahan, D. Tolomeo, J. P. O'Conner, A. McMenamin, Vehicle Operators R. Mercure, C. Harrison, R. Moore, R. Viereck, J. W. Tytula, S. T. Ellis, T. J. O'Conner, J. Richard, J. McMahon, Trackmen V. Okskin and D. Eckenrod shall each be allowed pay at their respective rates of pay for all hours worked by the contractor's forces beginning December 2, 1987 and continuing.

6. As a consequence of the violation referred to in Part (1) hereof (System Docket CR-4171), Track Foreman J. J. O'Conner, Machine Operators J. P. O'Conner, F. Pratt, Vehicle Operators R. Viereck, J. Richard, Trackmen V. Okskin, D. Eckenrod and E. W. Aitken shall each be allowed pay at their respective rates of pay for all hours worked by the contractor's forces beginning on March 15, 1988 and continuing.

7. As a consequence of the violation referred to in Part (1) hereof (System Docket CR-4172), Track Foreman J. J. O'Conner, Machine Operators M. Callahan, D. Tolomeo, Vehicle Operators R. Mercure, C. Harrison, R. Moore, R. Viereck, J. W. Tytula, S. T. Ellis and T. J. O'Conner shall each be allowed pay at their respective rates of pay for all hours worked by the contractor's forces beginning on March 18, 1988 and continuing.

8. As a consequence of the violation referred to in Part (2) hereof (System Docket MW-205), Track Foreman P. T. Papadakis, Machine Operators, A. M. McMenamin, J. P. O'Conner, C. Pappas, D. L. Tolomeo, Vehicle Operators T. Pais, M. Phelan, E. G. LaPoint, Trackmen V. W. Okskin and D. Eckenrod shall each be allowed pay at their respective rates of pay for all hours worked by the contractor's forces from June 7, 1988 to July 8, 1988.

9. As a consequence of the violation referred to in Part (2) hereof (System Docket MW-206), Track Foreman P. T. Papadakis, Machine Operators A. M. McMenamin, J. P. O'Conner, C. Pappas, D. L. Tolomeo, Vehicle Operators T. Pais, M. Phelan, E. G. LaPoint, W. Anderson, M. Callahan, J. Kostorizos, Trackmen V. W. Okskin and D. Eckenrod shall each be allowed pay at their respective rates of pay for all hours worked by the contractor's forces from June 2 to 30, 1988.

10. As a consequence of the violation referred to in Part (2) hereof (System Docket MW-207), Track Foreman P. T. Papadakis, Machine Operators A. M. McMenamin, J. P. O'Conner, C. Pappas, D. L. Tolomeo, Vehicle Operators T. Pais, M. Phelan, E. G. LaPoint, Trackmen V. W. Okskin and D. Eckenrod shall each be allowed pay at their respective rates of pay for all hours worked by the contractor's forces from June 1, 1988 to July 7, 1988."

FINDINGS:

Upon the whole record and all the evidence, after November 8, 1990 hearing in

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Washington, D. C., the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

DECISION:

Claims denied.

OPINION

This case arises from claims filed by BMW Employees in and after July 1987, on the basis of allegations that the Carrier improperly contracted out BMW Scope-covered work, in connection with a project to increase the vertical track clearances to 19 feet 4 inches under bridges on the Carrier's Boston Line from M.P. 21 to M.P. 183, between Framingham, Massachusetts, and Chatham Center, New York. The purpose of the project was to lower the roadbed underneath the bridges, by undercutting the trackage under each bridge and relaying the track at a lower elevation, to achieve clearances sufficient to accommodate tri-level automobile cars and double stacked, container cars.

The Carrier's BMW forces performed all of the track work that was required to carry out the project.

The herein claims, which were handled on the property as eight (8) separate cases, have been consolidated into a single case for presentation to this Board.

The Organization submits that the disputed work is encompassed within the express, explicate text of the Scope of the BMW Agreement, and that the Carrier violated

that Agreement when it contracted the work to an outside company.

The Carrier submits that its action in contracting out the vertical clearance project on the Carrier's Boston Line did not violate the Agreement, and that on that basis the claim should be denied. The Carrier more specifically asserts that the disputed contracting out action was justified because of the Carrier's lack of specialized equipment, unavailability of qualified operators of such equipment, and schedule limitations. The Carrier further asserts that even though its BMW Employees, arguably, could have performed some portions of the contracted work, the Carrier was under no obligation to attempt to piece-meal the work in order to give some portion of the work to the Carrier's Employees.

* * * * *

From full review and assessment of the whole record, the Board finds and concludes that the record does not establish a violation of the BMW Scope Rule on the part of the Carrier. The claims will therefore be denied for lack of the requisite record support.¹

The record shows that when General Motors decided to use completely enclosed tri-level cars, there was need for Conrail to initiate a project on its Boston Line to provide vertical clearances of 19 feet 4 inches, underneath bridges, in order to accommodate 19 foot multi-level traffic. The project was also needed to accommodate

¹ All prior authorities submitted for the record have been considered and analyzed in arriving at this decision.

the continuing growth of Conrail's double stacked flat car container business in the New England market (Carrier's Exhibit 3-M).

By letter dated June 4, 1987, Conrail's Senior Director-Labor Relations gave notice to General Chairman J. P. Cassese of Conrail's intent to contract with an outside company to provide forces for excavation, drainage, rock removal, and installation of ballast at specified locations on the Boston Line. The letter also stated that the project was scheduled to be completed between July 1987 and December 1988, and that the estimated cost of the project was 2.2 million dollars. The letter dated June 4, 1987, is reproduced in full at Appendix Pages 1 and 2.

The Board is persuaded by the foregoing and other information of record that the Carrier was not required to piece-meal the work involved in the clearance project in order to give portions of the work to the Carrier's BMW Employees. If the Carrier had assigned the disputed work to its own Maintenance of Way Employees, it is probable that this would have resulted in the Carrier giving the clearance project priority over work usually assigned to its Maintenance of Way Employees; however, the Carrier decided, for efficiency considerations, to use a mix of contractor forces and its own forces to carry out a project that extended for about a year and a half. This was a proper use of management power.

Accordingly, on the basis of the record as a whole, the Board finds that the claims should be denied for lack of the requisite support.

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A handwritten signature in cursive script that reads "Fred Blackwell". The signature is written in dark ink and is positioned above a horizontal line.

Fred Blackwell
Chairman / Neutral Member
Public Law Board No. 3781

April 12, 1994

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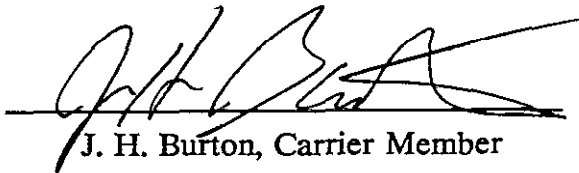
AWARD

The claims are hereby denied for lack of the requisite record support.

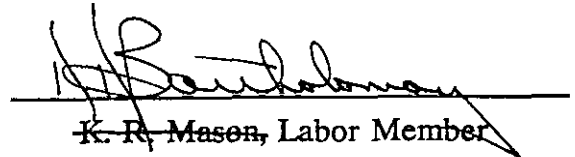
BY ORDER OF PUBLIC LAW BOARD NO. 3781.



Fred Blackwell, Neutral Member



J. H. Burton, Carrier Member



K. R. Mason, Labor Member

Executed on 2-8-95, 1994

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FILE

June 4, 1987

Mr. J. P. Cassese, Sr., General Chairman
 Brotherhood of Maintenance of
 Way Employees
 1165 Marlkrass Road, Suite B
 Cherry Hill, NJ 08003

File 079.50-56

Dear Sir:

This is to advise that we have undertaken an extensive clearance project from Framingham, Mass. to Chatham Center, New York to provide a 19'-4" vertical clearance along the Boston Line from MP 21.00 to MP 183.00 in order to permit 19' multi-level traffic. To accomplish this work, we will require contract forces for excavation, drainage, rock removal and installation of ballast at the following locations:

<u>STRUCTURE</u>	<u>LOCATION</u>
*150.25	North St., Pittsfield, MA
*150.09	First St., Pittsfield, MA
*149.93	Second St., Pittsfield, MA
148.18	Junction Rd., N. Adams Jct., MA
90.74	Old Boston Rd., Ludlow Jct., MA
74.84	South St., W. Warren, MA
70.66	Warren St., Warren, MA
47.30	Curtis Pkwy., Worcester, MA
*46.30	Exeter St., Worcester, MA
*46.23	Cambridge St., Worcester, MA
*45.89	Gates St., Worcester, MA
*41.67	Hamilton St., Worcester, MA
22.35	Winter St., Framingham, MA

* - Scheduled for the 1987 Work Season

The contracted work is estimated to be \$2,258,350 and is scheduled to be done between July 1987 to December 1988.

EXHIBIT 1

Appendix Page 1

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J. P. Cassese
Page 2
June 4, 1987

Conrail does not have the rock drilling and rock splitting equipment that may be required to perform rock excavation at the above locations. Our forces will perform all track removal and installation work.

Solely as information, there will be structural work done by a contractor during the above period to raise 30 government bridge that Conrail does not own or maintain.

Very truly yours,

/s/ G. F. Bent *GF*

G. F. Bent
Senior Director-Labor Relations

EXHIBIT 1

Appendix Page 2