Award No. 21
Case No. 21

Public Law Board No. 2203

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employes

and

Consolidated Rail Corporation

STATEMENT OF CLAIM: (a) The Carrier violated the Rules Agreement effective April 15, 1944, as modified September 1, 1949, particularly Rule 1-Scope, as well as conditions of Article IV-Contracting Out, contained in the May 17, 1968 National Agreement, when it entered into a rehabilitation program on the Nesquehoning Valley Branch of the former Lehigh Valley Railroad and contracted the work to Railroad Construction Corp. (Railcon) rather than recall from furlough and utilize qualified and available Maintenance of Way Employes.

(b) As the result of such violations, Claimants listed in Employes' Exhibits "B" and "B-1" hereto be compensated at the applicable rate, as shown in those Exhibits for each day the violation existed commencing September 20 and terminating October 31, 1977.

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FINDINGS: From September 20 to October 31, 1977, Railroad Construction Corporation, an independent contractor, performed accelerated maintenance work on the Nesquehoning Valley Branch between Nesquehoning Junction (MP0.0) and Tamamend, Pennsylvania (MP 16.7). This work was performed pursuant to contract between Railroad Construction Corporation and Conrail. Ownership of that Branch remained vested in the Trustee of Lehigh Valley Railroad Company. Unlike most of the properties of the Lehigh Valley, it had not been conveyed to Conrail in April 1976. The Commonwealth of Pennsylvania had obtained from the Trustee the right to use the branch for rail freight service operations and, though its Department of Transportation, hereinafter referred to as the D.O.T., entered into an operating agreement with Conrail whereby Conrail would operate over the Branch in consideration for certain compensation. The operating agreement, entered into in March 1976, could by its terms be terminated on 30 days notice.

Claimants are Conrail employes on furlough who had been responsible for maintenance on the Nesquehoning Branch.

The use of the independent contractor to perform accelerated maintenance was not inconsistent with the terms of the operating agreement between Conrail and the Pennsylvania D.O.T. It, however, was in violation of Article IV of the

Petitioner's collective bargaining agreement with Conrail. Carrier did not comply with Article IV's requirements to meet with Petitioner, in advance of contracting out work, in a "good faith"attempt to reach an understanding in connection with the proposed contracting to an outside firm.

In Petitioner's view, it also ran afoul of Section 509 of Title V of the Regional Rail Reorganization Act of 1973, as amended.. Carrier contends, and we agree, that it is not this Board's province to interpret legislation of the Congress. Interpretation of Federal or State Statutes should be left to the judges and appellate machinery of appropriate courts.

We nevertheless are not in accord with Carrier's view that it bears no responsibility in this matter. At the time it entered into the operating agreement with the State, it knew that it had well defined commitments under its agreement with Petitioner. Those commitments were not extinguished or modified in any material respect and Petitioner has not ratified the operating agreement.

While Carrier is not the owner of the Branch in question and under some circumstances that fact would free it from liability, it was sufficiently in control of the disputed work, in our judgment, to require it to comply with the procedures of Article IV of its collective bargaining agreement. The Penn-

sylvania D.O.T. could not free Conrail from contractual commitments that were already in existence. A contrary conclusion would in this situation deprive employes of critical protection that they had acquired by agreement and of which all parties were aware. The record establishes no emergency basis for denying the work to the employes on furlough.

This is not the type of situation that was considered by the Third Division in Awards 20639 and 20644. The record here does not adequately show that Carrier lacked the power to observe the rules of its agreement with Petitioner.

Paragraph (a) of the claim will accordingly be sustained. Paragraph (b) will also be sustained subject to the deduction of any compensation received by claimants from Conrail during the claim.period.

AWARD: Claim sustained in accordance with last paragraph of Findings.

Adopted at Philadelphia, Pa., Sept. 17, 1979.

ORDER: Carrier is ordered to make the above Award effective on or before October 17, 1979.

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Harold M. Weston, Chairman

I. M. Lerner
Carrier Member
Dissenting

Fred Hyde
Employe Member