

Award No. 22  
Case No. 22

Public Law Board No. 2203

PARTIES  
TO  
DISPUTE:

Brotherhood of Maintenance of Way Employees  
and  
Consolidated Rail Corporation

STATEMENT  
OF  
CLAIM:

1. Claimants should be paid one day's pay for each date contract forces performed work on railroad property in connection with relocating or rehabilitating tracks in connection with Interstate Route 78.
2. A joint study be made by the Carrier and Organization to determine the dates the contractor performed work from December 26, 1975, the date forces were reduced and all subsequent dates until the forces were increased and claimants recalled.

FINDINGS:

There is no question but that this claim would have merit if, as alleged in paragraph 1 thereof, -

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an outside contractor actually did perform work on Carrier's property during the claim period in connection with the Route 78 track project. Carrier has clearly committed itself to an agreement that no Track Department employee would be furloughed while a contractor was working on Carrier's tracks under those conditions. That claimants were on furlough during the period in question is undisputed.

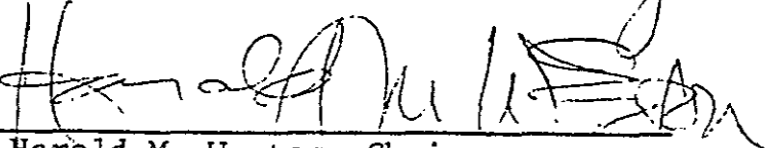
The problem here is that there is not a scintilla of evidence in the record that work was performed by an outside firm during the claim period on Carrier property. That issue was squarely raised by Carrier when the claim was under consideration on the property, but at no time did Petitioner come forward with the necessary proof. Mere assertions, contentions and assumptions are not to be equated with evidence.

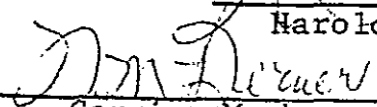
The burden of establishing all elements of the claim rests with Petitioner and it is not relieved of that burden because of the difficulty in obtaining proof.

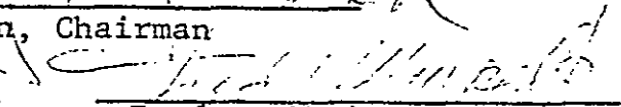
In this posture of the record, the claim must be denied.

AWARD: Claim denied.

Adopted at Philadelphia, Pa., *January 11, 1980.*  
1979.

  
Harold M. Weston, Chairman

  
Carrier Member

  
Employee Member