

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 12

Case No. 12

Referee Fred Blackwell

Carrier Member: J. H. Burton

Labor Member: S. V. Powers

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 Agreement was violated when outside forces were used to replace grade crossings on the S. Tier Division beginning September 9, 1985 (System Dockets CR-2416 and CR-2417).

(2) The Agreement was further violated when the Carrier did not give the General Chairman prior written notification of its plan to assign said work to outside forces.

(3) Because of the aforesaid violations, Mr. R. Tammaro shall be allowed eight (8) hours of pay at the foreman's straight time rate and Mr. R. C. Meyers shall be allowed eight (8) hours of pay at the Class 2 machine operator's rate for each day, beginning September 9, 1985, on which the work referred to in Part (1) hereof is performed by outside forces.

FINDINGS:

Upon the whole record and all the evidence, and after hearing on December 5, 1988, in the Carrier's Office, Philadelphia, Pennsylvania, 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.

OPINION

This is a contracting out dispute under the Scope Rule of

the Conrail-MofWE Schedule Agreement, effective February 1, 1982.

The dispute arises from claims by two furloughed Employees in the classification of Class 2 Machine Operator and Foreman in the Carrier's Maintenance of Way Department, who allege that the Carrier violated the applicable Agreement when it engaged an outside contractor (Manz Railroad Construction) to replace (black-top) grade crossings at Waverly, New York, and other locations throughout the South Tier Division beginning on September 9, 1985. The Claimants further allege that the Agreement was also violated by reason of the Carrier's failure to give the General Chairman prior written notification of its plan to assign the subject work to outside forces.

The requested remedy is for an award which directs the Carrier to pay Claimant Tammaro eight (8) hours at the Foreman's straight time rate and Claimant Meyers eight hours at the straight time rate of the Class 2 Machine Operator for each day beginning September 9, 1985 on which the subject work was performed by outside forces.

* * * * *

After due study of the foregoing and of the whole record, inclusive of the submissions¹ presented by the parties in support of their respective positions in the case, the Board concludes and

¹ The prior authorities submitted by the parties have been carefully studied and analyzed in making the ultimate conclusions and findings in this case.

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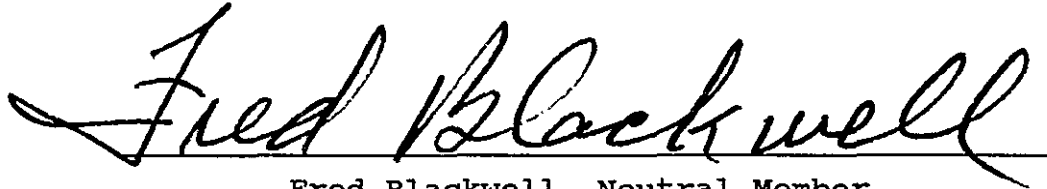
finds that the facts and issues presented in this case parallel those presented by the disputes disposed of by this Board in Award No. 9, Case No. 9; Award No. 10, Case No. 10; and Award No. 11, Case No. 11. In all Awards claims for payment of compensation to furloughees were sustained.

In disposing of the herein claims the Board will adhere to the precedents of Awards Nos. 9, 10, and 11 and consequently, the herein claims will be sustained.

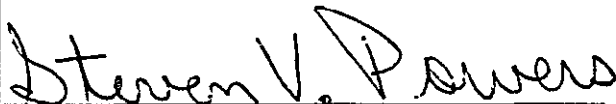
AWARD:

Claims sustained.

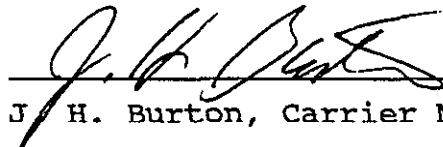
BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 1016



Fred Blackwell, Neutral Member



S. V. Powers, Labor Member



J. H. Burton, Carrier Member

Executed on APR 05 1991, 1991

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ADDENDUM BY REFEREE BLACKWELL

Foregoing proposed Award No. 12, Case 12, along with proposed Awards Nos. 10 and 11, was the subject of extensive discussion in the Executive Session conducted by the Board in Carrier's offices, Philadelphia, Pennsylvania, on August 22, 1990. All of these proposed Awards No. 10, 11, and 12, related to similar claims arising from the Carrier actions of contracting out paving work at grade crossings.

After careful consideration of all matters covered by said discussion in the Executive Session, it is concluded that as with Award No. 10, Case 10, and Award No. 11, Case 11, such discussion does not provide a basis for changing any of the findings in the proposed Award.

An Addendum similar to the herein Addendum will be found in Awards Nos. 10 and 11.

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

Frederick R. Blackwell, Chairman/Neutral
Special Board of Adjustment No. 1016

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