

SPECIAL BOARD OF ADJUSTMENT NO. 1016

**AWARD NO. 151
CASE NO. 151**

**PARTIES TO
THE DISPUTE:** Brotherhood of Maintenance of Way Employees

vs.

Consolidated Rail Corporation

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained in accordance with the Findings

DATE: July 9, 2001

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (North Versailles) to cut brush and trees at Port Perry Mile Post 1.7 and at Wilmerding, Pennsylvania on September 18, 1996 (System Docket MW-4570).
- (2) The Agreement was further violated when the Carrier failed to give the General Chairman prior written notice of its plan to contract out the work referenced in Part (1) above, as required by the Scope Rule.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Machine Operators E. Hester and R. Thomas shall each be allowed eight (8) hours' pay at the machine operator's straight time rate, all overtime credit for day and month for benefits and vacation purposes."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

As indicated in the Statement of Claim, the Organization contends that basic brush cutting, which has been ordinarily and customarily performed by forces it represents, was improperly performed by an outside contractor on the Claim date. Carrier opposes the Claim primarily on the ground that the work has not been exclusively performed by Organization represented employees. When the work involves clearance of pole lines and signal facilities, it has been performed by

another craft. In addition, the Carrier notes that both Claimants were on duty and under pay on the Claim date. It is undisputed that Carrier did not provide the Organization advance notice of its intention to contract out the disputed work.

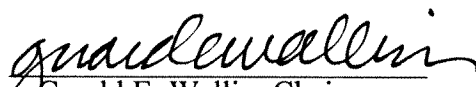
The record in this controversy shows a basic disagreement over the nature of the work performed by the contractor. The Carrier contends it was clearance of signal and pole line facilities and not basic right of way clearance. The Organization maintains the work was basic right of way work.

On this unique record, we find the Carrier had the burden of proof to clarify the nature of the work. It has failed to do so. Moreover, the kind of dispute present here is among the kinds of situations that the advance notice provisions were intended to address. Carrier failed to provide such notice. As a result, no discussions were ever held that may have resolved the controversy surrounding the nature of the work.

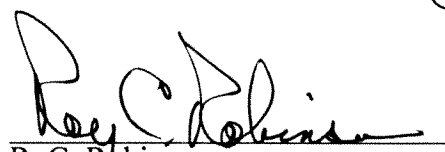
Our review of the record convinces us that Claimants are entitled to additional straight time compensation of four hours each as a remedy.

AWARD:

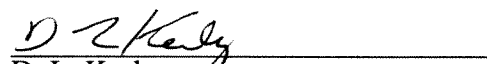
The Claim is sustained in accordance with the Findings.



Gerald E. Wallin, Chairman
and Neutral Member



R. C. Robinson,
Organization Member



D. L. Kerby,
Carrier Member