

SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 159

CASE NO. 159

PARTIES TO
THE DISPUTE:

Brotherhood of Maintenance of Way Employees

vs.

Consolidated Rail Corporation

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied

DATE: July 13, 2001

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Poole Paving) to perform Maintenance of Way work (haul and compact stone) to and at Reed Yards in Middletown, Ohio on December 23, 1997 (System Docket MW-5176).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman proper advance written notice of its intent to contract out the work described 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, Track Foreman R. A. Mix, Vehicle Operators J. Kellems, K. C. Hager and Machine Operator K. Stapleton shall each be compensated for eight (8) hours' pay at their respective rates of pay."

FINDINGS OF THE BOARD:

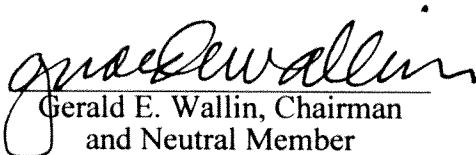
The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties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

The basic facts are essentially undisputed. On December 1, 1997, Carrier purchased 1,000 yards of stone. The price included delivery. The delivery trucks spread the stone by tailgating ahead as they dumped. To the extent further spreading was necessary, one of Carrier's scope covered employees performed the work with a front-end loader. Although the Claim initially contended that the contractor also used a roller-compactor to compact the stone, the Organization conceded, during the on-property handling, that such was not the case. The machine merely was left at the work site while the stone was being delivered.

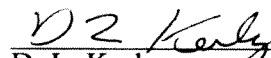
Under the unique circumstances of this record, we do not find any violation of the Agreement. Nothing in the scope rule precluded the purchase and delivery of the materials in the manner described.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


R. C. Robinson,
Organization Member


D. L. Kerby,
Carrier Member