

**SPECIAL BOARD OF ADJUSTMENT NO. 1016**

AWARD NO. 160  
CASE NO. 160

PARTIES TO  
THE DISPUTE: Brotherhood of Maintenance of Way Employees

vs.

Consolidated Rail Corporation

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied

DATE: July 18, 2001

**STATEMENT OF CLAIM:**

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Chisler Inc.) to perform Maintenance of Way work (place rip rap in sinkhole) on the Lverage Secondary on the former Monongahela Secondary beginning on February 15, 1998 and continuing (System Docket MW-5271).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with 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, Claimants C. E. Williams, Jr., A. B. Landman, R. Bukera, R. Daff and R. Nestor shall each be compensated for ten (10) hours' pay at their respective rates of pay for each day that the contractor performed the work in question beginning February 15, 1998 and continuing."

**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.

On this record, the Carrier contended that the work in dispute was not just filling in a sink hole with rip rap. It said that rerouting of the adjacent creek and stabilization of the embankment constituted emergency circumstances that required the use of the contractor with equipment and expertise. The emergency arose out of the derailment of a train and closure of the mainline the day previous to the day the work was performed.


The Organization contested the existence of emergency circumstances by noting that a


February 2, 1998 newsletter reported the derailment as having occurred on January 29<sup>th</sup> and not February 14<sup>th</sup> as claimed by Carrier. The Organization's reliance on the newsletter is misplaced. A newsletter published on February 2, 1998 could not have described a derailment that had not yet occurred as of that date.

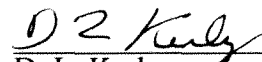
Given the state of this record, we must find that Carrier's actions did not violate the Agreement as alleged in the Claim.

AWARD:

The Claim is denied.

  
Gerald E. Wallin, Chairman  
and Neutral Member

  
R. C. Robinson,  
Organization Member

  
D. L. Kerby,  
Carrier Member