

SPECIAL BOARD OF ADJUSTMENT NO. 1016

**AWARD NO. 143
CASE NO. 143**

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

vs.

Consolidated Rail Corporation

ARBITRATOR: **Gerald E. Wallin**

DECISION: **Claimdenied**

DATE: **July 25, 2001**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Acme Construction, Inc.) on September 11, 1995 to remove approximately forty (40) to sixty-five (65) feet of rail, ties and ballast and grade the roadbed and on September 18, 1995 to install ties, plates, spikes and ballast and surface the same forty (40) to sixty-five (65) feet of track on the KKK track from the frog to the fence line east of Wayne Yard in Wayne, Michigan (System Docket MW-4331).**
- (2) The Agreement was further violated when the Carrier assigned outside forces (Acme Construction, Inc.) to construct three switch panels on September 19, 20, 21, and 22, 1995 (System Docket MW-4330).**
- (3) The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intent to contract out the work identified in Parts (1) and (2) above as required by the Scope Rule.**
- (4) As a consequence of the violation referred to in Parts (1), (2) and/or (3) above, Foreman R. Warner, Class 2 Machine Operators B. Aldrich, G. C. Phillips and D. Hughes, Truck Driver J. Collins, Casual Driver W. Hamisfar, Welder D. Killarney and Mr. C. Miranda shall each receive forty-eight (48) hours of pay at their respective straight time rate."**

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.

This matter consolidates two separate alleged violations of the Agreement as noted in the Statement of Claim. Although both Part (1) and (2) contend that Carrier improperly contracted out scope covered work, neither evidentiary record establishes such impermissible conduct.

The facts in Part (1) show that a separate business entity, Wayne Industries, engaged in an expansion of its warehousing activities on its own property, which bordered on Carrier's Wayne Yard property. As part of the expansion, Wayne Industries hired a contractor, Acme Construction, Inc., to reconstruct track on its property that connected with track on Carrier's property. This was known as track 745. In reconstructing the Wayne Industries portion of track 745, Acme apparently encroached onto Carrier's property and also reconstructed some forty to sixty-five feet of Carrier's track. When the matter was brought to its attention, Carrier denied any knowledge or authorization of the Acme encroachment. Indeed, the signed statements of several of the Claimants verifies that Acme did not have permission to enter on Carrier's property. Carrier also denied benefitting from the Acme work or paying anything for it. Nothing in the record refutes these assertions.

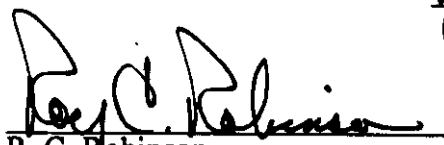
On the record for Part (1), therefore, we are compelled to find that the Organization has not fulfilled its burden of proof obligations to establish a violation of the Agreement. Because no improper contracting of work has been established, it follows that Carrier was not remiss when it did not provide any notice to the Organization. Part (1) and the applicable portion of Part (3) of the Claim must be denied.

While the record for Part (2) does not portray the clearest of circumstances, the resulting picture painted by the evidence shows that Carrier purchased three fully assembled switch panels that were fabricated on private property adjacent to Wayne Yard. Although the materials for the panels were delivered to Carrier property and then moved by Acme onto the private property, the record does not establish that Carrier was the owner of the materials at any time prior to their assembly into the finished panels. The panels were later brought onto Carrier's property and installed by Carrier forces.

Nothing in the scope rule of the Agreement explicitly precludes Carrier from purchasing finished goods from outside vendors nor do any of the prior awards cited by the Organization create a precedent that, on this property, prohibits such transactions. Accordingly, we again must find that the record for Part (2) of the Claim does not establish a violation of the Agreement. In addition, since no scope covered work was contracted out, Carrier was not required to provide notice of its intended purchase.

AWARD:

The Claim is denied.


R. C. Robinson,
Organization Member


Gerald E. Wallin, Chairman
and Neutral Member


D. L. Kerby,
Carrier Member