

SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 145
CASE NO. 145

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: June 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 (National Salvage & Service Corp.) To dismantle and remove track and other track materials (some of which were returned to the carrier for future use) at Mile Post 3 to Mile Post 26 on the Weirton Secondary beginning March 4, 1996 and continuing (System Docket MW-4378).
2. The Agreement was further violated when the Carrier failed to give the General Chairman advance written notice of its plan to assign said work to outside forces.
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Messrs. R. W. Thomas, R. Burdette, J. Lipinski, L. Moran, J. O'Hara, D. W. Smith and D. Williams shall each be allowed ten (10) hours' pay, per day, at their respective straight time rates, all overtime at their respective time and one-half rates with proper credits for benefit and vacation purposes beginning March 4, 1996 and continuing until the violation ceased."

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.

Although a number of contentions and cross-contentions were raised by the parties, the record clearly demonstrates that Carrier contracted with National Salvage & Service Corporation ("National") to remove ties and other track materials from some 23 miles of abandoned track on its

Weirton territory. The contract provided that National would return a number of the ties, replated, to Carrier for use elsewhere in its railroad operations. Carrier entered into this contract without any notice of same to the Organization.

When the Organization objected to the foregoing arrangement, Carrier rescinded the portion of the contract that called for replating the ties. Nonetheless, Carrier still "repurchased" several thousand of the ties.

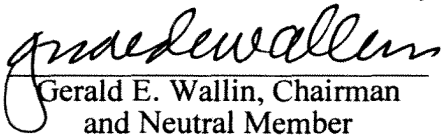
Despite Carrier's attempt to characterize the overall transaction as an "As is - Where is" sale with a later separate repurchase of ties, the record establishes that a return of the ties was contemplated from the outset. This effectively amounts to hiring a contractor to salvage track materials for Carrier's use.

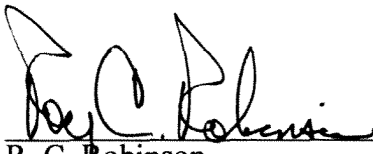
On this unique record, we find that Carrier's indirect, purported two-step transaction violated the applicable Scope Rule and notice provision.

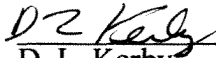
Because the number of salvaged ties returned is uncertain, on this record, this dispute is remanded to the property for a joint review of records to determine the number of work hours to be paid to Claimants based on the number of salvaged ties actually returned.

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