

SPECIAL BOARD OF ADJUSTMENT NO. 1016

**AWARD NO. 149
CASE NO. 149**

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

vs.

Consolidated Rail Corporation

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied.

DATE: July 28, 2001

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned an outside force (R. J. Corman) to perform maintenance of way work (pick up, transport and deliver track materials to CP 58) on the Chicago Main Line on April 24, 1996 (System Docket MW-4471).
- (2) The Agreement was further violated when the Carrier failed to give the General Chairman prior 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, furloughed Vehicle Operator M. J. Hart shall be allowed ten (10) hours' pay, with all benefits and credits due him for April 24, 1996."

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.

A procedural objection by the Carrier requires discussion at the outset. Carrier contends that this Board has no jurisdiction over the dispute because it was not handled in the usual manner on the property. Specifically, Carrier maintains that the Organization submitted new information and expanded previous arguments after the appeal was handled by the final appeal officer on the property.

The Carrier's objection must be rejected. Section 26(d) of the parties' Agreement establishes a nine-month time limit in which a claim may be progressed to this Board following the decision of Carrier's highest designated officer. A primary purpose of this relatively lengthy time period is to permit the parties to reflect on the merits of their respective positions, do additional investigation

and refine or augment their positions accordingly. Were it not for this capability, there would be little practical reason for the nine-month time limit. It is well settled, therefore, that the on-property record remains open for continued development until the time limit expires or a Notice of Intent to File an Ex-Parte Submission is served.

The instant dispute has considerable history. At one time, Carrier maintained some seven or eight material yards – also known as bulk yards. It would stockpile track and building materials and other components at these yards for later use at specific job sites. When job requirements became known, the materials were extracted from the bulk yard stockpiles and either shipped by rail or highway vehicle to the job site. According to the record, employees represented by the Organization as well as other unions, such as TCU, performed the material handling functions at these bulk yards. This included the transportation of the materials from the bulk yard to the job site if highway vehicles were used.

Carrier eventually consolidated the bulk yards into three regional yards at Columbus, Ohio, Pitcairn, Pennsylvania, and Abrams, Pennsylvania. Carrier employees still performed the materials handling duties. This arrangement continued until the Spring of 1994 when Carrier contracted with R. J. Corman (“Corman”) Railroad Company, a Kentucky corporation, to have Corman thereafter provide the bulk yard capability. Carrier’s bulk yards were closed shortly thereafter.

According to the Bulk Material Yards Agreement Carrier signed with Corman, Corman would provide essentially a “just in time” material supply system for Carrier. It would receive supply orders from Carrier; it would, in turn, obtain materials from suppliers that conformed to specifications provided by Carrier; and it would deliver the materials to the applicable job sites when needed. Distilled to its essence, the activities performed at the Corman bulk yards essentially replicated the functions of Carrier’s regional bulk yards before they were closed.

The pivotal issue in this dispute is whether and to what extent the Scope Rule of the parties’ Agreement covered the work in dispute. In considering the various competing factors involved, we have confined ourselves to those matters that were raised during the handling of the dispute by the parties on the property. Any new information and argument that was raised by the parties for the first time in their submissions to this Board has been disregarded.

After careful consideration of the evidence contained in this unique record, it is our conclusion that the work in dispute, namely the pickup, transport and delivery of track materials to CP 58 on Carrier’s Chicago Mail Line on April 24, 1996, did not come within the coverage of the Scope Rule.

The Scope Rule in the parties’ Agreement does not explicitly mention material handling. It does, however, capture work that was being performed by covered employees as of the effective date of the Agreement. The record herein establishes a very important line of demarcation that separated the work of Carrier’s employees from that performed by outsiders. Carrier employees did not begin performing material handling functions until after the materials were actually taken into Carrier’s

physical possession. On this record, all of the handling by outsiders that occurred upstream of this point of actual transfer of possession was apparently done without objection by the Organization. No prior award precedent dealing with this upstream handling has been provided to us.

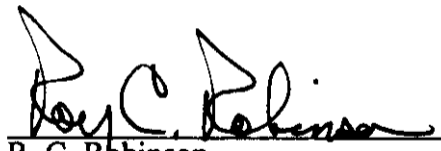
On this record, Carrier did not gain actual physical possession of the materials until after they were delivered by Corman to CP 58 on the Chicago Mail Line. As a result, all of the work associated with the ordering, loading, transport and delivery by Corman occurred prior to the attachment of scope coverage. Given the fact that all of Corman's work in this Claim was not covered by the Scope Rule, it follows that Carrier was not required to provide advance written notice to the Organization.

Finally, we wish to emphasize that this Award is confined to the narrow issue presented by this record. This Claim did not raise issues about the handling of the materials in question after the transfer of possession. Accordingly, we have made no findings regarding any such work and nothing herein should be construed as though we had.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


R. C. Robinson,
Organization Member


D. L. Kerby,
Carrier Member