

**SPECIAL BOARD OF ADJUSTMENT NO. 1016**

AWARD NO. 152  
CASE NO. 152

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: July 10, 2001

**STATEMENT OF CLAIM:**

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned an outside contractor (National Engineering and Contracting) to drive sheet piling, install tie back rods and place rip rap to repair the sea wall at the C&P Dock, Whisky Island, Cleveland, Ohio from June 24 through August 15, 1996 (System Docket MW-4630).
- (2) As a consequence of the aforesaid violation, B&B Foreman K. G. Champa and Mechanics W. E. Johnson, F. R. Hoyt, G. Pongonis, S. J. LaCaera, P. J. Kolcan and J. A. D'Orazio shall each be allowed '... (8) hours at the appropriate rate of pay for the hours worked by (7) men from National Engineering and Contracting of Cleveland, Ohio on June 24, 25, 26, 27, 28 1996, July 1, 2, 3, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30, 31, 1996, August 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 1996 and continuing until this matter is resolved.'"

**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.

According to the record, Carrier notified the Organization of its intent to contract out what it said was emergency repair work by its letter dated February 7, 1998. Carrier asserted therein that rapid deterioration since the previous September required immediate replacement of the seawall. The Organization disputed this emergency characterization of the situation by noting the gradual deterioration as well as the fact that the work did not begin for more than four months after the so-

called "immediate replacement" was claimed to be necessary.

The Carrier also alleged lack of scope coverage. The Organization, however, produced evidence of past performance of similar work by scope covered employees, including the seawall repair at Ashtabula Harbor, to support its contrary assertions.

The Carrier also noted that several of the Claimants were on vacation or jury duty during the Claim period. On other days, they were on duty elsewhere and under pay.

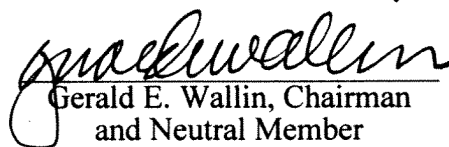
On this record, we find that the Organization's evidence does establish scope coverage of the work as against the use of outside contractors. Carrier's emergency defense has not been established by any probative evidence. In addition, the nature of the deterioration and the elapse of time between notice and the beginning of the work entirely under cut the Carrier's emergency assertions. Consequently, we find the Carrier did violate the Agreement when it contracted the work as it did.


The remedy, however, is not so straightforward. While the Carrier did not refute the dates of work specified in the Claim, the Organization's own appeal letter dated November 21, 1996 raises a significant question. Despite different a different starting date in the Claim, the appeal said the work did not begin until days later on July 1, 1996. It is also clear that most of the Claimants were not available on each of the Claim dates. Moreover, it is undisputed that they were under full pay throughout.

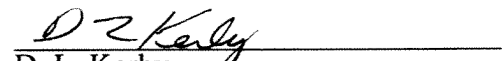
Given this unique record, we find the appropriate remedy to be one that provides each Claimant with additional compensation equal to twenty straight time days of eight hours each.

**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