

SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 153
CASE NO. 153

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 (Fastenal Company) to construct racks and bins to store bolts and other shop material in the Canton Maintenance of Way facility at Canton, Ohio from October 25 through November 22, 1996 (System Docket MW-4654).
- (2) The Agreement was further violated when the Carrier failed to give the General Chairman prior written notice of its intent to contract out said work as required by the Scope Rule.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Messrs. J. Pritchett, T. Vickers and M. Humes shall each be allowed eight (8) hours' pay at their respective straight time rates for the work performed by the outside contractor."

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 purchased certain pre-manufactured rack and bin equipment for the storage of shop materials. Carrier contended that the equipment was dissimilar from previous storage systems that may have been constructed. It also asserted that the equipment was purchased "installed," which included Fastenal employees transferring and organizing the inventory and bar code labeling the bins. Carrier also maintained that such work had not been exclusively performed

by scope covered forces in the past. Carrier did not refute the Organization's contention that no notice had been provided.

Regarding the magnitude of the Claim, Carrier asserted, without refutation by the Organization, that no contractor work was performed on most of the dates specified in the Claim. Carrier also contested the number of hours worked saying that the contractor only used three employees on one date; in addition, the contractor forces only worked four to six hours per day and never eight hours in any day.

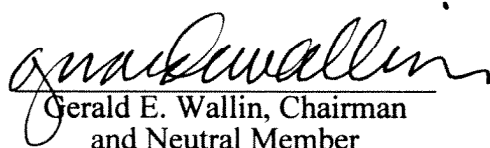
The Organization provided signed statements attesting to the performance of similar work in the past by scope covered employees.

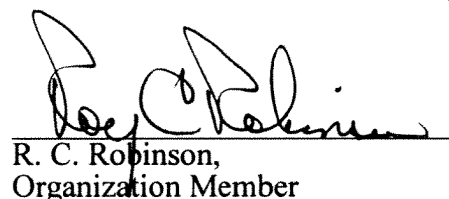
On this record, we find that Carrier was entitled to purchase finished goods rather than use covered forces to construct the storage equipment. However, the installation and inventory set up work is another matter. The Organization has shown sufficient past performance of similar work to trigger the Carrier's obligation to provide the requisite notice and engage in the kind of discussions contemplated by the notice provisions. If failed to do so.

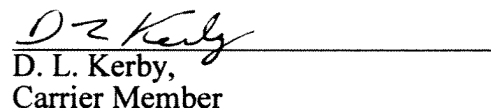
For the remedy, we find that the record to support an award of additional compensation to each of the three Claimants equal to fifteen (15) hours of additional straight time pay.

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