

SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 154
CASE NO. 154

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 11, 2001

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (JGM Construction) to grade and spread stone in the parking lot of the Truck Train Terminal, Baltimore, Maryland on April 17 and 18, 1997 (System Docket MW-4936).
- (2) The Carrier further violated the Agreement when it failed to furnish the General Chairman with advance written notice of its intention 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, L. T. Moffitt, G. E. Huntzberry, G. C. Wirts, R. W. Kollar and J. J. Herron, Jr. shall each be allowed sixteen (16) hours' pay at their respective rates of pay."

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, this Claim presents a basic disagreement about scope coverage. Carrier maintains the work involved *paving*, which is not scope covered. It presented a April 26, 1989 letter from an international representative of the Organization in support. As a result, the Carrier contends advance written notice of its intention was not required. Carrier also noted that the Claimants were on duty and under pay on the Claim dates and were not, thereby, available for the

work. Finally, the Carrier asserted that JGM Construction did not grade the stone.

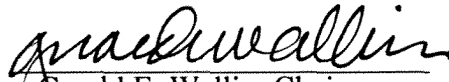
The Organization, on the other hand, contends that the disputed work did not involve *paving*. It claimed only the spreading and grading of the stone. It also provided evidence in the form of employee statements to establish two points: First, that scope covered employees have performed similar spreading and grading work in the past and, second, that the contractor did perform such work at the facility in question.

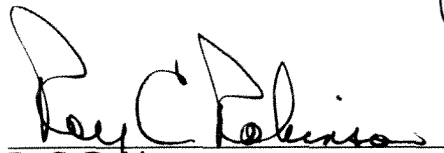
After careful review of the record, we are compelled to find that the Organization's evidence establishes scope coverage of the work for purposes of the notice provisions of the Agreement. This evidence was not effectively refuted by the Carrier. Accordingly, the Agreement was violated.

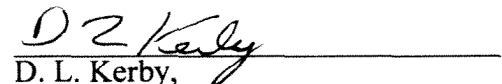
Under the circumstances of this unique record, we find the proper remedy for the violation to be additional compensation paid to each Claimant in the amount of five (5) straight time hours.

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