

SPECIAL BOARD OF ADJUSTMENT NO. 1016

**AWARD NO. 157
CASE NO. 157**

**PARTIES TO
THE DISPUTE:**

Brotherhood of Maintenance of Way Employees

vs.

Consolidated Rail Corporation

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained

DATE: July 31, 2001

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Ben L. May) to perform the work of ditching and laying plastic pipe at Conway Yard on August 25, 1997 and continuing (System Docket MW-5052).
- (2) The Agreement was further violated when the Carrier failed to give the General Chairman prior written notice of its plan to contract out the work referenced in Part (1) above as required by the Scope Rule.
- (1) As a consequence of the violations referred to in Parts (1) and/or (2) above, Messrs. M. Sakaluk, R. Jessop, H. Allen, G. Cotter and C. Rosewicz shall each be paid for eight (8) hours per day at their respective straight time rate of pay and each shall be compensated for all overtime worked by the outside forces at their respective time and one-half rate of pay, beginning August 25, 1997 and continuing until the work referred to in Part (1) was completed."

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.

The Sheet Metal Workers International Association was provided notice of their potential third-party interest in this matter. By letter dated October 27, 1999, however, the union advised that it declined to participate. Its response was not intended to be supportive of either party herein.

The Claim challenges the ditching and laying of plastic pipe for air lines at Conway Yard. Carrier's primary defense to the Claim is that the disputed work did not fall within the scope of the effective Agreement. In this regard, Carrier concedes that it did not provide the General Chairman written notice of the planned contracting transaction per the Scope Rule.

In general, scope coverage for performance of the work and scope coverage for entitlement

to notice have different evidentiary burdens of proof in railroad dispute resolution. In the absence of explicit reservation language in the applicable scope rule, organization's are required to demonstrate that the employees it represents have historically, customarily and traditionally performed the kind of work in dispute to establish an entitlement to perform the work. Entitlement to advance written notice, however, requires only evidence of past performance of the same kind of work.

While Carrier maintained that the installation of air lines at Conway Yard had been performed by a rival craft, the Organization asserted that Maintenance of Way employees had installed such pipe in the past using the same butt welding process that the contractor used. The record contains a statement signed by Claimants Cotter and Jessop attesting to the prior installation of 84 feet of plastic butt weld pipe at Conway Yard and some 180 feet of plastic air line pipe at Mingo Junction.

Carrier also failed to refute certain critical assertions made by the Organization on the property. One assertion was that Claimants were initially advised that they would perform the work. The second is that Carrier sent the Claimants to training to become qualified in the butt weld fusion process. In support of these assertions, the Organization provided copies of the certificates of training completion. Claimants completed the training, which was provided by Lee Supply Company, Inc., on April 15, 1997, well in advance of the Claim dates.

On this record, we find the Organization has established scope coverage of the disputed work for purposes of advance written notice. This finding is not diminished by the fact that a rival craft may also have performed the work in question. See Third Division Awards 11733 and 27012.

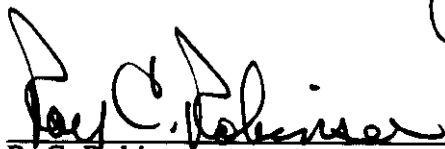
Carrier's failure to provide the notice, therefore, violated the Agreement. Since no good faith discussions were held, we must reject the Carrier's defense that the Claimants were on duty and under pay elsewhere.

Finally, we reject the Organization's contention that the Claim represents a continuing violation of the Agreement. The record establishes that the disputed work was a single contracting transaction and not a series of recurrent violations.

AWARD:

The Claim is sustained


Gerald E. Wallin, Chairman
and Neutral Member


R. C. Robinson,
Organization Member


D. L. Kerby,
Carrier Member